ATHENIAN CONSTITUTIONAL HISTORY.

SCHÖMANN ON GROTE.

BOSANQUET.

John Fletcher

ATHENIAN CONSTITUTIONAL HISTORY.

ATHENIAN CONSTITUTIONAL HISTORY,

AS REPRESENTED IN

GROTE'S HISTORY OF GREECE,

CRITICALLY EXAMINED BY

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Translated, with the Author's permission,

BY

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TRANSLATOR'S PREFACE.

THE conclusions reached in this criticism (published, 1854) are substantially the same as those of the corresponding part of Professor Schömann's Handbuch (Berlin, 1870). This criticism, however, deals at length with the relation of Grote's opinions to the ancient authorities; and is, therefore, of special interest and importance to English students, who may desire to verify what they read in Grote or in Curtius. It may be advantageously used as a commentary on the "Materials for the History of Athenian Democracy, from Solon to Pericles," recently collected by Mr. Case, to which reference might have been made on every page; but a general reference here is sufficient.

The references to Grote's pages are to the eight volume edition of 1862; the chapters, which are the same in all editions, have been added, to facilitate reference. The division into sections, their headings, and the table of contents, are the work of the translator; who has also added a few notes in brackets [ ].

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Schömann on the Constitutional History of Athens.

§ 1. Introductory.

IN his History of Greece, Mr. Grote has produced a work, the study of which cannot be too urgently recommended to all who are concerned to acquaint themselves with Greek Antiquity. It presents a combination of merits which few historical works of any kind present in the same degree; and certainly none of the works which have hitherto treated of Greek History. It displays the most accurate acquaintance, based on the profoundest and most comprehensive studies, with the whole of Greek antiquity, as far as its productions have come down to us; the most careful consideration of modern researches, in all cases where consideration is due; penetrating criticism in the employment both of the authorities, and of the results which moderns have obtained from them; and finally, a clear, intelligible, and interesting narrative style, by which the reader's intellect, and where the subject allows of such treatment, his sympathies and feelings as well, are roused and delighted. His familiar intercourse with the works of the Hellenic past, has imbued the author with the mind and spirit of that past: he can live, as it were, with the ancient Hellenes; and he thinks and feels as a contemporary of the men whose acts and destiny he narrates. Yet, though he so perfectly adopts the stand-point of the times of which he writes, so thoroughly enters into the modes of thought and feeling of the men whom he sets before us, and though he is so ready to follow them in all their connections, relations, and tendencies, still he always maintains the attitude of the impartial observer who is on a higher level than his subject; the liveliest sympathy with the actors does not impair the independence and impartiality of his judgment.

The history of Greece must, of course, be especially a history of Athens,—the eye of Greece, the Prytaneum and sacred hearth of the Hellenic world, the Hellas within Hellas. In saying that Mr. Grote has written of Athens in a way worthy of his subject, I conceive that I am giving praise which is at once his due, and the highest that can be desired. These words of praise, and of genuine gratitude for the abundant profit which I draw from repeated readings of his work, are a preface which I hold myself bound to prefix to the following pages, which are devoted to the discussion of some of the subjects, his account of which appears to me less satisfactory. The reason why the public discussion of these subjects seems to me not to be superfluous, is that the great esteem in which Mr. Grote's work is held by all who know it—and I hope that there may be many who do so even in Germany, not to speak of England, where it has been received with the most unanimous applause—may very easily have the effect of causing views put forward by Mr. Grote, to pass for the right ones with most readers, merely because it is he that puts them forward. Whereever he has occasion to doubt or dispute the views of his predecessors, Mr. Grote shews himself so profound and cautious a critic, that this at once inclines us to presume that he would not have brought forward what he does as his own view without the same profound and cautious criticism, and that it therefore merits entire confidence. But no judicious person, least of all Mr. Grote himself, will be offended if, in spite of my complete recognition of the excellence of his work as a whole, I do not conceal that there are many points on which I have to regret the absence of the profoundness and the care which his critical procedure elsewhere displays. I do not propose to write a review of his whole work, but will confine myself to a particular part, which I cannot persuade myself that Mr. Grote has treated more correctly than his predecessors, from whom he deviates in many points. This part is one which of course is among the most important, viz. the constitution of Athens, and the various stages of its growth.

I intend very shortly to produce a more popular account

of Greek antiquities, in which the Athenian polity will naturally have a principal place; the present work may serve as an anticipatory justification, if in that account I merely, for the most part, repeat what I have formerly asserted in other writings about the Athenian polity, without entering into Mr. Grote's divergent views, for the estimation of which the plan of the work alluded to affords no suitable place.

§ 2. The Four Tribes and their Divisions.

(*a.*) *Their Names significant.*

In point of fact, the history of the Athenian constitution only begins with the legislation of Solon. This was the basis of the constitution of later times, which we know from our authorities with tolerable completeness and accuracy: though in many cases it cannot be determined with certainty, how much in the later constitution should be ascribed to Solon, and how much to later legislators, who built on the foundations which he laid. About the times before Solon, and the earliest institutions of the state, we find in our authorities only a few isolated notices, in part obviously fictitious, from which little can be drawn that is of value for history. We hear of a union of several communities, previously separate, into a single collective state; divisions of the people by clans and classes are noticed; we are told how archons were instituted after the abolition of the monarchy, at first hereditary with a life tenure, then decennial, then an annual college of nine; and finally, there are hints of one or another deliberative or judicial authority; but all the more definite points of the constitution and administration are wrapped in deep obscurity, to illuminate which we have no means at command. Here, as elsewhere, there has not been wanting an abundance of attempts to fill up the gaps in our knowledge by conjectures, and many of these conjectures cannot be denied the merit of ingenuity: but of course this gives them no claim to rank as history. Mr. Grote, rightly feeling that it is one thing to write history, and

another to make ingenious conjectures, has not only refrained from them himself, but has for the most part passed over in silence those of earlier authors; and his doing so merits nothing but approval. Still there is one point in which he seems to have carried his critical reserve a little too far, and to have rejected a view which results so necessarily from unambiguous indications, that it may claim to rank as more than a mere conjecture. This point concerns the question about the original constitution of the four ancient tribes of the Athenian people, of which question I must therefore permit myself to speak somewhat in detail.

The most ancient division of the people, the reality of which cannot be doubted, is that into the four tribes (Phylæ), Geleontes, Hopletes, Argadeis, and Ægikoreis; which, according to the legend mentioned in Herodotus (5. 66) and Euripides (Ion, l. 1575 ff.), were derived from the four sons of Ion, the mythical Eponymus of the Ionic race. This traditional derivation was the reason which impelled the writers of Atthides, at a later time, to venture upon conjectures as to an earlier tribal division antecedent to that in question. As the prevailing legend did not place Ion at the head of Athenian history, but named a succession of kings previous to him, the question forced itself upon these antiquaries, whether there were not tribes in the times before Ion also, and what they were. It is obvious that this question could only be answered by hypotheses. The number of the ancient tribes which hypothesis was to furnish did not need to exceed four, because there were no more of the historical Ionic tribes, and there was no reason to suppose that any larger number had been decreased by a union of several tribes into one; and further, there was no occasion for assuming fewer than four. So the number was retained, and names were easily found for the four tribes, partly from the denominations of the principal districts of the country; partly, perhaps, from traces of the *cultus* formerly prevalent in these districts.

As an inscription recently discovered indicates Zeus Geleon to have been the tribal deity of the Geleontes, we may assume that the other tribes had also their tribal

deities; the Ægikoreis perhaps Athene, which may have induced Euripides to derive their name from the ægis of the goddess, the Hopletes Poseidon, the Argadeis Hephæstus. Hence were obtained the four tribes, Dias, Athenais, Poseidonias, Hephæstias. But the mere possibility that this may have been so, is all that any judicious person would maintain. The division, alleged to be yet more ancient, into the tribes Kekropis, Autochthon, Aktæa, Paralia; and again into Kranais, Atthis, Mesogæa, and Diakris, is obviously a pure invention. We may imagine tribes like Mesogæa, Aktæa, Paralia, Diakris; but no one can help regarding it as a mere conceit, that in this extraordinary way there should be ascribed to the same time two tribes Aktæa and Paralia, named after local districts, and two named not after districts, but after something else; and that the same extraordinary fact should have repeated itself in a subsequent change of names, the two which before got their names elsewhere being now named after districts, and the two before named after districts now getting names elsewhere. This is so, apart from the objection that might be taken to names like Atthis, Autochthon, and Kranais. Yet, however little we may believe these notices, we are not on that account to deny them all value. At least, they furnish an indication that the antiquaries with whom they originated, are to be counted as believing that the tribe-division was connected with the local division, and that the inhabitants of one and the same district were also associates of one and the same tribes, and that therefore the ancient tribes were local divisi ns (*φυλαὶ τοπικαί*) as well. Now some moderns, among \ hom is Mr. Grote, are disposed to (1) regard them as family divisions (*φυλαὶ γενικαί*) only, and to regard the local tribes as not instituted before Kleisthenes; whose tribes were indeed purely local when instituted, but, as is well known, did not remain by any means exclusively so, as families even if they changed their residence, and migrated into other parts of the country, still continued to be members of the same Phyle as that to which their ancestors belonged in the time of Kleisthenes.

Three of the four Ionic tribes have decidedly significant names,—Hopletes, Argadeis, Ægikoreis. It cannot be doubted that the first of these names meant "warriors," especially warriors who fought in panoply, that is as Hoplites, not as light-armed. It is clear, too, that Argadeis meant "working-men," though it is uncertain what class of working-men is to be understood: whether agricultural labourers or artisans. Ægikoreis can only mean "goat-herds." But it is true that the name Geleontes admits of no certain interpretation, but only of a conjectural one; that it cannot have been other than significant may be asserted with entire confidence. Now if the names are significant, the conclusion is of necessity forced upon us, that they were given to the tribes not arbitrarily, but because of their significance. This was the view of the ancient enquirers, whose opinions we learn from Strabo and Plutarch. The former says (viii. 383) that Ion divided the people into four tribes, and then assigned to it four different ways of life; to some agriculture, to some handicrafts, to others the sacerdotal organization, and to others the defence of the country. He does not mention the names of the tribes; but it cannot be doubted that he knew them; and it is equally certain that he did not conceive the assignation of ways of life, as an ordinance distinct from, and unconnected with, the division into tribes, but that his notion was that of each tribe being assigned its peculiar occupation, after the division by tribes had been made.

Further, it is equally clear that by the class devoted to the country's defence—*φύλακες*, as he calls them—he meant the Hopletes; and likewise, that in speaking of the handicraftsmen (*δημιουργοῖς*), he could only be thinking of the Argadeis. So there remain only the Geleontes and Ægikoreis for the priests (*ἱεροποιοί*), and the field-labourers (*γεωργοί*), and it is open to every one to choose which he will consider as corresponding to which. I need hardly add an assurance in so many words, that I am not referring to Strabo, with the idea that instruction is really to be got from him about the system of the old tribes and their occupations, but only as evidence for the assertion, that even

the ancients believed in a connection between the tribes and the crafts or professions. Besides, Strabo's view about the crafts was clearly determined by Plato, who in the Timæus represents a division corresponding to the Egyptian castes as existing in primitive times in Attika as well, consisting of priests; craftsmen; a third class including shepherds, hunters, and field-labourers; and lastly the warriors. We can see that the first of these classes is Strabo's *ἱεροποιοί*, the second his *δημιουργοί*, the third his *γεωργοί*, the fourth his *φύλακες*; and this name is enough to shew that Strabo had in his mind a floating reminiscence of Plato, who, as is well known, employs the name in the Republic for his class of soldiers. Independent of Plato as it appears is Plutarch, Solon, c. 23, who leaves out the priests, and makes the Hopletes soldiers, the Argadeis (or Ergadeis) working-men, the Ægikoreis shepherds, the Geleontes—for the name stands so in the MSS. in that place—field-labourers. Plutarch's statement, like Strabo's, is of course not to be counted as evidence of the real constitution of the tribes, but only as a proof that the ancients, too, believed the tribe-names to have a meaning, and to have been given to the tribes just because of their meaning. It can hardly be doubted that Plutarch and Strabo were far from standing alone in that opinion; it is extremely probable that the majority held the same view, and Plutarch very likely found what he asserts in one of the authorities whom he used for his biography of Solon. The view in question is far more rational, than to imagine that these significant names were assigned to the tribes without reference to their meaning, and so quite arbitrarily; and that therefore, as tribe names, they are in fact meaningless.

And this appears to be Mr. Grote's judgment also, when he says, "It is affirmed, and with some etymological plausibility, that the denominations of these four tribes must originally have had reference to the occupations of those who bore them[a];" and when he adds, "The names of the tribes may have been originally borrowed from certain professions, but it does not necessarily follow that the reality corre-

[a] Vol. iii. p. 262, 3 (p. ii. c. 10.)

sponded to this derivation, or that every individual who belonged to any tribe was a member of the profession from whence the name had originally been derived." With this I have only to express my agreement; but Mr. Grote appears inclined to withdraw, subsequently, what he has here admitted. On the following page we read, "From the etymology of the names, be it ever so clear, we cannot safely assume the historical reality of a classification according to professions. And this objection (which would be weighty, even if the etymology had been clear) becomes irresistible, when we add that even the etymology is not beyond dispute; that the names themselves are written with a diversity which cannot be reconciled; and that the four professions named by Strabo omit the goat-herds, and include the priests; while those specified by Plutarch leave out the latter, and include the former." Still, all these "irresistible" arguments amount to a proof of no more than this, that the ancient writers had no certain knowledge about the tribes, and that all the names cannot be interpreted with equal certainty. But this makes it none the less certain that they had a meaning. For instance, the name Argadeis may have meant field-labourers, or artisans; one of these two meanings it certainly had, and one of them must have been the reason why a tribe received the name Argadeis. Which of the two it was may be left undecided, if we have once for all made it a rule to confine ourselves, in investigations of this kind, to what is supported by evidence. I am far from blaming Mr. Grote for adhering to this rule; but for this one reason I conceive that I am justified in blaming him, because he is reluctant to admit what is really quite evident, that the ancient tribes received their designations according to the occupations of their members, whatever these occupations may be thought to have been.

It seems as if this reluctance was caused by the fear, that to make such an admission would justify the inference of a caste-system like that of Egypt, an inference which has, in fact, been drawn from it by some writers. Mr. Grote himself says on this point, "If we should even grant that

such a division into castes might originally have prevailed, it must have grown obsolete long before the time of Solon; but there seem no sufficient grounds for believing that it ever did prevail[b]." To this I, for my part, have nothing to object; what I cannot approve of is, that Mr. Grote is not content to abide even by what he adds on the same page, and what I quoted above; that supposing the tribe-names to have been originally chosen because of certain occupations, this does not involve a complete correspondence between the names and the reality, or that every member of the tribe had really been engaged in the occupation after which his tribe was named. There was absolutely no ground for withdrawing this view. It is quite certain that the tribes might be designated from certain occupations, if these were the commonest or most important in the respective tribes, though many members of the tribe might be occupied, not in these, but in other vocations. We find just the same thing later, in some Demes or districts of Attika. For instance, there was a Deme "Kerameis," "The Potters," to which, among others, Gylon, Demosthenes' maternal grandfather, belonged. It will be believed without hesitation, on the authority of Philochorus (quoted in Harpokration), that the name of this Deme was taken from the trade carried on in it, but no one will suppose that at any time the members of the Deme were exclusively potters. Rather, the Deme was so called because there was a particularly large number of potters in it, because the trade was carried on there to a greater extent than elsewhere. Thus we are not to regard the Deme Ergadeis, which an inscription has lately acquainted us with, as composed exclusively of field-labourers, or artisans; but only as one in which one or other of these classes was particularly conspicuous. Just the same must have been the case with the tribes. The tribe of the Hopletes must be regarded as that in which the fully-armed warriors composed the most important part of the population; the tribe of Ægikoreis as that in which the goat-herds, and so the tribes of the Geleontes and Argadeis as those in which the persons designated by those names in virtue of their employments, occu-

[b] Vol. iii. p. 263.

pied a similar position; there being in each case, besides those indicated by the name, a more or less considerable number of other members of the tribe.

(*b.*) *Local as well as Family Unions.*

The primitive bond of the Phyle was undoubtedly a real or fictitious tie of kindred between its members, and therefore we may agree with Mr. Grote in designating the most ancient Phylæ[c] as φυλαὶ γενικαί (associations based on relationship). This is at once plain from the names of their subdivisions, the Phratries and Gentes, which clearly express a connection of relationship; and if we enquire into the natural process of origin, it is obvious that the Gens came first, the union of several Gentes or the Phratry second, and the union of several Phratries or the Phyle third, in succession.

But here we must bear in mind that, although the political order is erected on the foundation of the natural, still in erecting it the natural order of things is more or less reduced to system, and a certain degree of symmetry is introduced, even if it is not rigidly carried out. This result cannot be attained without interferences, and artificial expedients of various kinds. Some of the ancients tell us about an equal number of households, or families, viz. thirty in every Gens, and the same number, viz. again thirty, of Gentes in the Phratry; so that, as there were three Phratries in each of the four tribes, the total number of the Phratries would be equal to the months, and that of the Gentes to the days in the year. All this I am inclined, in agreement with Mr. Grote[d], to hold as a mere imagination, such as in this particular way had never been realised in fact. Still, the number of three Phratries in a tribe need not be doubted, and some sort of symmetry in the subdivisions is at least not improbable. Only it is certain that such an arrangement could not be initiated till after the accomplishment of the union, in a single collective state, of the earlier separate

[c] Vol. iii. p. 269.

[d] Ibid., p. 265.

communities; which the legend ascribes to Theseus. But at the time when this political order was instituted, there can be no doubt that the Phylæ and their divisions were associations connected by place as well as by relationship. The members of the same Gens, Phratry, and Tribe were also, in primitive times, residents of the same localities, and each of these divisions had its own district; so that the country was divided into as many districts, large and small, as there were Gentes, Phratries, and Tribes. In later times, we find many Demes, or districts, called after Gentes; this is an unmistakable indication that the Gens after which it was called was resident in the district; not that a single Gens possessed the whole territory, but that the name was given to the district from the most conspicuous among several Gentes[e]. What is true of the Gentes, is true also of course of the Phratries, i.e. just as the families composing a single Gens lived together in a single district, the Gentes composing a single Phratry also lived together in a single district of greater extent. That this view was not unknown to the ancients is shewn by this, among other reasons, that some one proposed as an explanation of the word "Phratry," that they had a common well (*φρέαρ*). However bad this explanation may be, it is quite clear that it could not have been so much as suggested, unless the Phratries had been known as associations united by place as well as blood. About the tribes, I have already remarked that several of the names which they were imagined to have borne before the time of Ion were taken from portions of the country; and therefore prove that the antiquaries who invented these names, must necessarily have conceived the Phylæ as local, each possessing a portion of the country.

Now, as long as such a relation existed—and, in substance, it must always have existed—the word "Phyle"

[e] Buttmann, Phratries, Mythol., ii. p. 232, believes Budæus to be the author of this explanation, which he does not himself absolutely reject. No doubt it is proposed by Budæus in the Comm. l. gr.; but that it is ancient, appears from Servius on Virg. Æn., vii. 286. The name *ὠβά*, too (= *ὄα*, *οἶα*, *οὐά*, *ὠά*), means properly, a separate district. See Hemsterhus. on Hesych. in *οὐαί*, Müller, Dor., b. ii. c. 5, 3, and Böckh, ii. p. 713, where "Geschlecht" is written for "Phratrie" by an oversight [?].

might be used in two senses: it might mean the part of the country in which the tribe resided, or it might mean the total of the tribe members, of whom the majority were no doubt resident in that part of the country, though individuals might have migrated and settled in another district. This double meaning of the word must be borne in mind, if we would understand and estimate correctly the notices of the ancients about subdivisions of the Phylæ other than those already mentioned.

(*c.*) *Relation of ἔθνη and τρίττυες to Phratries.*

That is to say, we are told of ἔθνη and τρίττυες, and even that there were three of them in each tribe, so that their number was the same as that of the Phratries; and this equality in numbers has misled many into regarding the actual subdivisions as identical, and into believing that φρατρία, ἔθνος, τριττύς, are only different names for one and the same thing. That this is a mistake is now generally recognised. The name ἔθνος applies to the division into the three classes of the Eupatrids, Geomori, and Demiurgi, i.e. the nobility, the non-noble landowners, and the working-classes; and there is no doubt that each of these classes was contained in every tribe, probably even in every Phratry, though not in equal numbers in every instance. About their political importance we only know this much, that all rights relating to political administration were in the hands of the Eupatrids, or nobility; as it was exclusively from among them that the members of the senate, the magistrates, and the priests, were taken. The two other classes were excluded from these privileges, and there was in this respect no difference between them; so that it may seem as if, in political position, there were only two distinct classes, the noble and the non-noble. It is true that many writers have assumed, besides the noble and the non-noble, but free classes, yet a third class, of field-labourers who were not free, the origin of which they explained by a supposed conquest of the country by Ionians, who had partially or entirely subdued the old Pelasgic population, and depressed

them into a position like that of Helots or Penestæ. But, in reality, there is no justification for this assumption; and as Mr. Grote does not adopt it, there is no need for speaking further of it here.

Of the Trittyes we are told, that each of them contained four "Naukraries," each of which was under one or more Presidents, "Naukrars," who are compared with the later instituted "Demarchs," as the Naukraries are with the Demes. They were therefore local divisions; and, consequently, the Trittyes, or unions of four Naukraries each, were so too. Now, though the grammarians were wrong in identifying *ἔθνη*, or classes, with the Phratries, were they perhaps right in regarding Trittyes and Phratries as the same thing? If, as we saw above, the Phratries, too, are divisions of the Phyle, united not merely by kinship, but in locality as well, composed of fellow-inhabitants of the same district, what was the use of yet another division of the Phyle into the same number of districts as there were Phratry districts already existing? What Mr. Grote puts forward[f] as the relation between the two kinds of subdivision is not calculated to assist us to clear views on the subject. He says, "These four tribes may be looked at either as religious and social aggregates, in which capacity each of them comprised three Phratries and ninety Gentes; or as political aggregates, in which point of view each included three Trittyes and twelve Naukraries." "Comparing these two distributions one with the other, we may remark, that they are distinct in their nature, and proceed in opposite directions." The Trittyes and Naukraries are subdivisions of the tribe, framed with a purpose, and resting upon the tribe as their higher unity; the forty-eight Naukraries, as local circumscriptions, are a systematic subdivision of the four tribes, and embrace the whole territory; while, on the contrary, the Phratries and Gentes are aggregates of natural origin, not united into tribes till a later time. It cannot be denied that this is all correct; but it is not adequate. It does not help us to understand how the Trittyes and Naukraries, which are rightly designated as

[f] Vol. iii. pp. 264, 5.

local circumscriptions, can at the same time have been subdivisions of the Phylæ, which Mr. Grote has represented to us only as family tribes, formed by the union of Gentes and Phratries, which originate naturally, and therefore rest on kinship only; so that the Phylæ are represented only as parts of the people, not as parts of the country. His account is, therefore, open to the objection, that it leaves unnoticed the double meaning of the Phylæ. But, as regards the relation of the Trittyes to the Phratries, it is obviously less probable that the two names mean the same thing, than that they mean something different; and hence it may perhaps be assumed, that at the time when the Trittyes and Naukraries were organized the Phratries had already ceased to be local districts too, though they had formerly been so, just as much as the tribes. Also, it is easily conceivable that the primitive connection between the family and the residence of the members was destroyed sooner and more completely in the smaller divisions, or Phratries, than in the larger division, or Phylæ; and that therefore the former continued to exist as divisions of the people, and not as districts, while the Phylæ continued to be both the one and the other. Therefore, when it was purposed to divide the Phylæ districts into smaller sections, it was impossible to employ the Phratries for the purpose, and a completely new division had to be undertaken. Moreover, this division was certainly the work of a tolerably late age, not long before Solon's legislation.

"Naukrars," or "ship-headmen" was the name given to those who had to equip a ship of war and command the crew, like the Trierarchs of later times; "Naukraria," or "people of a ship-headman," was the name thence given to the districts to which the Naukrars, bound to provide a ship, severally belonged. Athens can hardly have had ships of war before the time of her beginning the war with Megara for Salamis, when she came to need a naval force; and these wars belong to the age of Solon. Mr. Grote[g] agrees in thinking that the Naukraries are an institution of later times, but[h] he doubts the correctness of explaining the

[g] P. 266. [h] P. 264.

name by the obligation to provide a ship; and prefers, with Wachsmuth and others, to derive it from *ναίειν*, "to dwell," and make it mean a "principal householder." How improbable this view is has been well pointed out by Böckh, in a note to the second edition of the "Public Economy of Athens," i. 708; and I am convinced that if Mr. Grote had been acquainted with that note, he would have given up his opinion.

§ 3. Relations between the towns of Attika before Synœcism.

It has been remarked above, that the organization of the Phylæ, and their subdivisions, could not have been introduced before the union of the whole people in a single state, which union the legend attributes to Theseus. In what sort of relation the small separate states stood to each other before his time, cannot be more precisely ascertained, except for what may be gathered from Thukydides'[1] account in the second book; even the notices in Strabo and others of twelve towns, which would have to be regarded as the centres of as many smaller states, have no claim to pass for certain historical tradition; perhaps they owe their origin merely to the circumstance, that those twelve towns were known as the former centres of the twelve Phratries. A connection between the towns and the Phratries has been thought of by Ignarra and Buttmann before me, and indeed nothing can be more obvious; the objections which others have brought against it are proved, on closer consideration, to be wholly without weight. An inscription gives us the name of a Phratry, *Ἀχνιάδαι*, which is, moreover, the only one we know of; so as those twelve towns are none of them called Achnia or Achniæ, it has been attempted to infer that there could be no connection whatever between them and the Phratries. This inference rests merely on the assumption, that the Phratries must necessarily have been named after the capital towns of their districts, or the towns after the Phratries; an assumption, the ground-

[1] Thuk., ii. 15.

lessness of which is obvious at first sight, especially if we recollect that the Phratries were of earlier origin than the towns or villages, which gradually arose in their districts, and one of which, the most important, or the most conveniently situated, became the capital of the Phratry. However, Mr. Grote has simply not touched upon this question, and in general has not permitted himself to put forward conjectures on the relations of that most primitive time. And of this course I cannot but approve, still, I find in his pages[k] an idea put forward concerning Eleusis, and its relation to Athens, which appears to me to rest on reasoning that is overhasty and unfounded. From the Homeridic[l] hymn to Demeter,—which all through treats Eleusis as a separate state, without the least mention of Athens, or of a relation of the Athenians to the cult of the goddess,—Mr. Grote thinks himself justified in inferring that at the time when the hymn was composed, according to Voss about the thirtieth Olympiad, Eleusis was still autonomous and independent of Athens. As if the poet must needs have touched upon the conditions of his own time, and would not rather confine himself to those of the primitive age in which his story's scene is laid, and when Eleusis was of course independent of Athens. It would be equally justifiable to assert, that at the time when the Iliad was composed, there were as yet no Ionic or Æolic colonies on the coast of Asia Minor, because the poem speaks of other inhabitants all over that region; or that there were no Herakleid and Doric states in Peloponnese, because the poet displays to us there nothing but kingdoms of Neleidæ and Pelopidæ.

The second argument, drawn from Herodotus, is no better founded. In Herodotus'[m] story, Solon tells Krœsus of a certain Athenian named Tellus, who had fallen *γενομένης μάχης πρὸς τοὺς ἀστυγείτονας ἐν Ἐλευσῖνι*, and it is clear that the event took place not very long before Solon's time. Now if we connect *τοὺς ἀστυγείτονας ἐν Ἐλευσῖνι*, then of course the Athenians fought a battle with the Eleusinians, and it may be inferred that the two towns were not yet

[k] iii. 279. [l] [i.e. originating with the Homeridæ.] [m] i. 30.

united in the same state. But if we connect γενομένης μάχης ἐν Ἐλευσῖνι, then the expression refers to a battle in the vicinity of Eleusis, and the ἀστυγείτονες, with whom it is fought, are not the Eleusinians, but without doubt the Megarians, with whom in those days the Athenians had various feuds, and to whose designation as ἀστυγείτονες Mr. Grote certainly could not object. There would have been far more reason for objection, in case Herodotus had meant to indicate the Eleusinians, in the position of the words τοὺς ἀστυγείτονας ἐν Ἐλευσῖνι, instead of which we should then expect either τοὺς ἐν Ἐλευσῖνι ἀστυγείτονας, or τοὺς ἀστυγ. τοὺς ἐν Ἐλευσῖνι. I may add, that Mr. Grote seems to have been led into his mistake by Lobeck, Aglaoph. p. 215, though he does not refer to him. But Lobeck himself amended his view later[n], in consequence of Müller's remarks in the opposite sense.

§ 4. Drako.

All that can be said of the relations and conditions which, about the end of the seventh century, aroused in the people the desire for a code of laws fixed in writing, to regulate the course of justice, which the Eupatrid authorities had so far administered with no guide but tradition and their own will, is clearly and cogently set forth in Mr. Grote's work. Drako's laws, as Aristotle testifies, did not change the existing constitution: for the institution of the college of Ephetæ is not to be regarded as a constitutional change: but they were conspicuous for their excessive harshness and severity, ordaining the heaviest punishments even for trifling offences. The censure, which on that account many considerable authorities among the ancients passed upon Drako, is well known. Of the moderns, some have undertaken to defend him, and Mr. Grote is on their side. For my own part, in cases like these, I am always inclined to take the side of the defence rather than that of the attack, and in this case I am ready to believe, that the sentences of the aristocratic judges pronounced on men of the people

[n] Add., p. 1361.

may often have been no less severe than Drako's laws. But I can find no proof anywhere that Drako confined himself to sanctioning tradition by laws, that he did not exceed customary severity, and that the charges brought against him only rest on a misunderstanding of the true state of the case. Least of all can I concede the force of proof to Mr. Grote's observations[o],—"the few fragments of the Drakonian tables which have reached us, far from exhibiting indiscriminate cruelty, introduced for the first time into the Athenian law, mitigating distinctions in respect to homicide; founded on the variety of concomitant circumstances." The evidence alleged for this is, among other places, Pausanias, ix. 36; he however says nothing but this, that there were certain cases in which Drako's laws made it allowable to kill a man, and required no penalty, as in the case of an adulterer caught in the act. Just the same account is given by Demosthenes, in Aristok., p. 637, and Lysias de Cæde Eratosth., p. 31; and they are the further evidence on which Mr. Grote relies.

Is it, therefore, maintained, that the severity of Drako's penalty for adultery, in permitting the adulterer to be killed by the offended person on the spot, is an argument against the alleged harshness of the Drakonian laws? It seems to me, on the contrary, that this is the expression of a high degree of severity, and that a more lenient lawgiver would not have thus given up the adulterer on the spot to the wrath of the offended person; but would have reserved the question of punishment for judicial determination. Or are we to find a proof of more lenient intention in the fact that Drako did not wish an unintentional blow, resulting in death, in the course of a boxing-match or a battle, to be regarded and punished as murder? Is it even conceivable that any legislator, however severe or cruel, could have made absolutely no distinction between such homicide and premeditated murder? According to Mr. Grote indeed, "we may conjecture that this was something connected with that spot[p],—legends, ceremonies, or religious feelings,—which compelled judges there sitting to condemn every man proved

[o] ii. 284, part 2, c. 10.

[p] The Areopagus.

guilty of homicide, and forbade them to take account of extenuating or justifying circumstances [q]."

But we search in vain for a proof of this conjecture. The place in Plato's Laws, to which Mr. Grote refers in his note, is not treating at all of murder and homicide, or of the Areopagus, but only of robbery and theft; and says that no one must be seduced by the poets, or narrators of myths, to commit such offences, under the delusion that he is doing nothing deserving punishment, because what he is doing is what the gods themselves have done. We can only imagine Mr. Grote's intention in making this reference, to have been something of this kind: he wished to shew that the myths [r] were not without influence on men's views on what was, and what was not, permissible: from that, he meant it should be further inferred that a similar influence of the myths might be assumed, even on the judicial determination of what is punishable; and finally, that it is quite conceivable that there were myths which caused the judges to condemn every murderer, or homicide, uniformly, and without distinction. Mr. Grote does not set out the steps of this reasoning; but if he had done so, whose assent would he have gained for his conjecture?

§ 5. Solon.

(*a.*) *Was there Democratic sentiment in his time?*

In passing to Solon and his legislation, Mr. Grote begins by speaking of the three parties into which, at that time, the people was divided,—Pedieis, Parali, and Diakrii. The latter, as Plutarch says (Solon, c. 13), were the most democratic in sentiment. Against this Mr. Grote remarks, that the expression is unsuitable to that age, in which it can hardly be assumed that there were democratic pretensions *as such*. If this means democratic, in the proper sense of

[q] ii. 286.

[r] [Grote may have meant rather more, viz. that the allusion to the myths in 941 B was connected with the severe penalties laid down in 941 D and 942 A. But on careful reading, it appears that there is no connection; the severity of the rule follows from the consideration ἔρωτι μὲν ταὐτῷ, κ.τ.λ., not from the sentence about the myths, which is a mere preliminary warning. Schömann's objection is therefore, on the whole, just.]

the word, then we must ask what the proper sense of this very ambiguous word may be. It is well-enough known that a sharply-defined and universally-accepted conception of democracy can hardly be established. But if democratic pretensions, as such, mean pretensions of the kind which e.g. the Periklean constitution recognised and satisfied, we must admit, of course, that so great an extension of the popular power, without distinction of rank or property, and such restriction of all authorities in favour of the sovereign people, could certainly not have been thought of at that early time. Still, Plutarch might call the Diakrii democratic in feeling, even though it was but a comparatively small measure of popular freedom and rights to which they aspired; it is only by comparison with the Pedieis, who wished to preserve the ancient oligarchy intact, and the Parali, who were content with more moderate concessions to the people, that he calls the Diakrii, who went further, the most democratic. The subject is unimportant; but I was desirous not to pass over it in silence, as Mr. Grote's remark may prepare the reader for the tendency of the account that follows, which is directed to allowing as little as possible that is democratic to the Solonian constitution, so as to leave more room for democratic innovations, to be effected by the later legislators.

(*b.*) *Grote's mis-reading of Plutarch.*

It is an extraordinary misunderstanding by which Mr. Grote represents Solon as elected archon with dictatorial power, "along with Philombrotus[s]." Then was Philombrotus given to Solon as a colleague, either to share the dictatorial power with him, and assist in framing the necessary ordinances, or to relieve him of the ordinary duties of the archonship? Plutarch says, c. 14, *ἥρέθη δ' ἄρχων μετὰ Φιλόμβροτον ὁμοῦ καὶ διαλλακτὴς καὶ νομοθέτης.* It is patent that Mr. Grote believed he read *μετὰ Φιλομβρότου*, and connected *ὁμοῦ* with those words, instead of taking together, as he ought, *ἄρχων ὁμοῦ καὶ διαλλακτὴς καὶ*

[s] P. 303.

νομοθέτης. The mistake would not have been worth mentioning, had it not been committed by one who is so profound as an enquirer, and so acute as a critic. The mode of dating by the next preceding archon, as Plutarch dates here, is familiar and frequent. Compare, among others, the instances in Böckh, Corp. Inscr., vol. i. p. 256.

(*c.*) *Seisachtheia and Amnesty.*

Solon fulfilled his task as peacemaker and lawgiver in two ways: first, by devising measures to remedy the most urgent evils of the moment; secondly, by introducing a constitution which was to secure to all classes of the people their proper rights for the future. At the head of the remedial measures stood the Seisachtheia, though the ancients themselves were not clear as to its precise nature. Some of them, indeed the majority, explained it as a complete remission of debts; others thought Solon merely relieved the debtors, in part by a diminution of the rate of interest, in part by the introduction of a money-standard about 27 per cent. lower; so that a debtor who had borrowed, for instance, 100 drachmæ of heavy money, had only to pay back 100 drachmæ of light money, and thus gained 27 drachmæ. Mr. Grote adopts a middle course. He assumes a total remission of the debts, but limits it to the case of debts for which the debtor's person or his land were the security. This restriction, he thinks, is required by Solon's own expressions, which all through speak only of mortgage pillars which he removed, and persons fallen into servitude whom he set free. To this he adds, that if Solon had enacted a universal remission of debts, he would have had no reason for lowering the standard of the currency. For this depreciation can only, he thinks, be explained by the case of the wealthier class, who, on the one hand, were creditors of the poor, and on the other hand, had debts of their own. The object would then be to compensate them, to a certain extent, for the loss they suffered in consequence of the remission granted to the poor debtors, by means of diminishing their own debts in the proportion in which the

currency was debased. This is very acute and persuasive argument; but it does not seem to me convincing. The practice of mortgaging landed property must have been followed, not only by poor debtors, but by more wealthy ones as well. It would be analogous to what we find later in Attika, and to our own practice, by which even well-to-do landowners, when in need of a loan, have it entered in the mortgage-register, as secured upon their land. In Attika, the erection of a pillar on the piece of land was just the same thing as the entry in the mortgage-register is with us. Mr. Grote would limit the remission to debts that were secured; but we may be sure that there were few or none that were not secured. Besides, that it was not only the poor who benefited by the remission, seems to be proved by the story about Solon's friends, Konon, Kleinias, and Hipponikus. It is said that they obtained early information of Solon's intention to remit debts, and so borrowed large sums of money, and bought estates, which they retained after the ordinance was published, without having to repay the borrowed money.

Plutarch (Solon, c. 15) tells this story without naming his authority; but this would hardly justify us in setting it down as a fiction. Mr. Grote himself lays no stress on Dionysius' mention of the remission of debts as being "for the poor." Supposing it to be universal, still it was especially the poor who benefited by it. Lastly, the debasement of the coinage might possibly be enacted for the purpose which Mr. Grote assumes; but it might also have other reasons, which we do not know.

The grammarians say further about the Seisachtheia, that it remitted the debts not only of private, but of public debtors; that is, that all fines and other pecuniary obligations to the state were remitted. The source of this statement is Philochorus, and there is no reason to doubt its correctness. But it is quite clear that this part of the measure at least, must have been as helpful to the rich as to the poor, or even more so. And not only were fines remitted, but also the punishment of Atimia; only excepting the cases of those who were banished on account of

murder and homicide, or of attempting tyranny, according to the words of Solon's law, quoted in Plutarch, c. 19. This amnesty is not to be regarded as part of the Seisachtheia; it even seems to have been enacted later than it, for it was in the eighth law of the thirteenth table; while according to Plutarch's account, the Seisachtheia must have preceded the legislation. But it was in the same spirit; the remission of private debts, fines, and public debts, was followed by this remission of Atimia.

Mr. Grote thinks[t] that so comprehensive an amnesty justifies the supposition that the judicial proceedings of the time immediately previous, must have been intolerably severe, as indeed would be in accordance with the Drakonian laws then in force. The supposition is not in itself objectionable, but I must express a doubt whether it is justified by the amnesty in particular. In times like those, full of internal discord and bitter party conflicts, in which each party was successful in its turn, exile and similar punishments must have been common enough, even if the laws and the course of justice were not excessively severe.

(*d.*) *Timocratic Classification.*

Among Solon's constitutional laws, our attention is first claimed by the Timocratic classification of the people. Mr. Grote agrees on the whole, as might be taken for granted, with our countryman Böckh's masterly treatment of this subject; only in respect of the third class, the Zengites, he feels compelled to deviate from Böckh, and to follow the statements of the ancients. What they say is, that the minimum income of this class was 200 medimni (=200 drachmæ); while that of the Knights, or the second class, amounted to 300; and that of the first class, the Pentakosiomedimni, to 500. Böckh, Staatsh, vol. i. p. 647, thinks it probable that the statement of the Zengites' income is incorrect; not, as he says, because it would be incredible that all who possessed less than 200 medimni, should have belonged to the lowest class (that of Thetes); but rather for

[t] P. 305, part ii. c. 11.

these two reasons, first, that the difference between the census of the knights (300 medimni), and that of the Zeugites (200 medimni), would be too small compared with that between the knights and the Pentakosiomedimni; and secondly, and more especially, because a law preserved in Demosthenes leads to another estimate of the amount. This law provides what compensation any member of the first three classes had to pay to a female relative belonging to the last class, if he refused to marry her. A Pentakosiomedimnus had to give her 500 drachmæ, a Knight 300; each, therefore, the equivalent of his income in medimni, or of his land's annual produce as valued; but the Zeugite only gives 150 drachmæ, and from this the conclusion seems to result, that a Zeugite's property need only produce an income of 150 medimni or drachmæ.

Böckh then shews how the property is calculated at twelve times the yearly produce, so that the minimum property of the Pentakosiomedimni was $12 \times 500 = 6{,}000$ drachmæ, or 1 talent; that of the Knights, $12 \times 300 = 3{,}600$ drachmæ; that of the Zeugites, $12 \times 150 = 1{,}800$ drachmæ. He further shews, as the result of a right interpretation of Pollux, viii. 130, how in the assessment of property-tax (or income-tax if that name is preferred), the Pentakosiomedimni had their whole property taken account of as *τίμημα*, or taxable capital, and the other two classes only a certain proportion of it. This was for the Knights $\frac{5}{6}$, or 3,000 drachmæ; for the Zeugites $\frac{5}{9}$, or 1,000 drachmæ. The class of Thetes was free from this kind of taxation.

In refutation of this account of Böckh's, which seems to me as convincing as it is clear, Mr. Grote makes two objections; one derived from the nature of the facts, the other from the testimony of the ancients. If we adhere to the statement of the ancients, he says[u], the taxable capital is in all three classes a definite multiple of the income; for the Pentakosiomedimni twelve times, for the Knights ten times, for the Zeugites five times, their income, which is not the case on Böckh's hypothesis; and this he thinks an adequate ground for preferring the other account.

[u] P. 320, part ii. c. 11.

To me it appears to be absolutely without importance. It is surely quite clear that it is a perfectly easy and simple process to estimate the landed property uniformly in all classes at twelve times the income; but in assessing the tax, to take account of only $\frac{5}{6}$ of this landed property in the case of the Knights, and $\frac{5}{9}$ in that of the Zeugites. Hence Mr. Grote is quite wrong in regarding the process as so complicated, and the fractions consisting of sixths and ninths as so improbable, as to prevent the acceptance of Böckh's conclusion from the analogy of the law of compensation-payments. Again, Mr. Grote insists on the coincidence of testimonies as evidence against Böckh. In this, he refers to the various places of the ancients, which unanimously state the census of the Zeugites at two hundred medimni. But this unanimity can only be held to constitute a coincidence of testimonies, on the assumption that what the passages contain are really distinct and independent testimonies. But this may not be so. Besides Plutarch, Solon, c. 18, we have to do only with Scholiasts and Grammarians, who undoubtedly drew from a common source, some ancient rhetorical Lexicon, of which there were several. The authority used by the old Lexicon, was no doubt one of the writers of Atthides, Philochorus, or Androtion, and Plutarch may have got his statement actually from the same source. The coincidence of authorities is therefore very doubtful, and cannot be regarded as a valid argument for the correctness of the statement which Grote follows.

What Mr. Grote goes on to say about the classification is not quite clear to me. "Though[x] the scale is stated as if nothing but landed property were measured by it, yet we may rather presume that property of other kinds was intended to be included, since it served as the basis of every man's liability to taxation." Meissner translates "since," by "weil" (= because). If this translation is correct, the argument appears to me to be fallacious, for it has not by any means been made clear whether, accord-

[x] Vol. iii. p. 160, [in the edition of 1849; omitted on p. 321, in vol. ii. of the edition of 1862].

ing to Solon's constitution, the class divisions were the only basis of liability to taxation. It is at least possible that even if in it nothing but landed property was considered, and therefore all who had little or no land belonged to the Thetic class, yet there might be some taxes levied in which even such Thetes were introduced into the assessment according to the amount of their property of other kinds. I should therefore like to conjecture that "since" here means not the reason, but the time; "seitdem," (from the time when). Then Mr. Grote would to all intents and purposes, agree with Böckh; for he, too, says that it was only at first that the Solonian classification took account of productive land only. Later, he thinks, when (e.g. in the Peloponnesian war) property-taxes became frequent, it is impossible that they should have been borne exclusively by the land-owners, and hence it must be assumed that the whole property, moveable and immoveable, was then counted together, and that it was on this basis that the place of individuals was fixed as in one class or another. Solon no doubt, like all other early politicians, regarded landed property as the most solid foundation for the permanence of a good and brave race of citizens, and therefore desired that individuals should invest their property principally in that form. Hence he degraded even a wealthy man, if his possessions consisted only in personal property (*ἀφανὴς οὐσία*) and not in land, into the lowest class of citizens, ranking him with the Thetes. But as regards taxation, it was possible if that took place, to impose on such a man, in spite of his position in the classes, a burden proportioned to his property. And we may be sure that in Solon's time, there were very few well-to-do citizens who were not landowners. After the fall of the thirty, when Phormisius proposed the law that only landowners should retain full citizenship, there were about 5,000 persons, a quarter of the citizen body, who would have been excluded if the law had passed.

Therefore even then, after Athens had for long been chiefly a maritime and commercial state, and while Peiræus was inhabited by a trading and manufacturing population

hardly less numerous than the population of the capital, still three-quarters of the citizens were landowners; how many more must have been so in Solon's time. But, above all, we must notice the possibility that Solon's classification may not have referred at all to taxation, but solely to the qualification for office, and to the obligation of military service. According to Thukydides[y], the first property-tax (εἰσφορά) was raised about Ol. 88. 1; not merely the first in the Peloponnesian war, but the first that was raised at all, as Böckh rightly interprets the statement of the historian. Whether any similar taxation existed at an earlier time, and if it did, on what principles it was arranged, we do not know. So we may regard the estimate of the τιμήματα or taxable capital, and the rules of its ratio to the landed property in each class, as an enactment which was not framed by the author of the class division, and was not devised till a later time.

(*e.*) *Principles on which distinction is to be made between Solonian and later institutions.*

On the subject of the privileges granted by the Solonian constitution to the several classes in respect of the offices of government and the Council of Four Hundred, the statements of the authorities are familiar and distinct. We know that the fourth class, doubtless the most numerous, was excluded from those privileges, but that its members were on an equality with those of the three upper classes in the right of voting in the general assemblies of the people, and in that of acting as sworn judges in the courts of law. But we are unfortunately without detailed and reliable notices of the functions of the popular assembly, and the position of the jury-courts. We are ignorant how often the popular assembly met, what questions it deliberated upon and determined, and whether there was any means of amending or annulling its decrees; we are not instructed as to the organization of the jury-courts, or Heliæa, and

[y] iii. 19.

their relation to the magistrates who administered justice, or to any other judges there might be. But it is clear that we shall conceive the functions of the assembly, and of the Heliæa, to have been more or less extensive, according as we are inclined to ascribe a more or a less democratic character to Solon's constitution.

Mr. Grote, admitting as he does nothing democratic in the strict sense to belong to Solon's age, conceives the functions in question as somewhat less important, than we on our side, who regard some democratic elements even at that time as a little less incredible; and in doing so, are, as is well known, following the example of the ancients themselves. It is true that the assertions of the ancients on this point are to be employed with great caution, and this is especially the case with the orators, who furnish most of the allusions to Solonian laws. They had no inducement to accurate distinction, and it was quite customary with them to designate all the more ancient laws by Solon's name. For he was the most famous legislator in the history of the state, and had at least laid the foundation of the whole system of laws that existed in later times, however great may have been the modifications which it subsequently underwent in the way of addition or removal. Besides, it is historically certain that the whole mass of laws underwent a thorough revision, and a fresh redaction, both a little before the end of the Peloponnesian war, and after the fall of the thirty tyrants.

Now it is plain that the quotations of the orators were taken, with a few solitary exceptions, from this revised and amended collection of laws; and in such a case it must often have been difficult, and indeed impossible, for any one but learned enquirers, to distinguish with certainty between what was really Solonian, and what was later. This observation forces itself so naturally upon every one, and the need of caution in utilizing such references in the orators to Solonian laws is so obvious, that it can scarcely have been overlooked by any one since the earliest application of historical criticism to Greek history.

For all that, Mr. Grote complains, it has not always been

duly borne in mind by the moderns, and criticism has not been applied as it ought to have been. "Even Dr. Thirlwall," he says, "has not entirely abstained from the practice, common with many able expositors of Grecian affairs, of connecting the name of Solon with the whole political and judicial state of Athens, as it stood between the age of Perikles and that of Demosthenes[z]." Then he instances as institutions thus wrongly referred to Solon, the Council of Five Hundred, the numerous dikasts or jurors taken from among the people by lot, the commission of Nomothetæ, chosen annually with a view to revision of the laws, and the γραφὴ παρανόμων, that is, the form of prosecution before a court in a case of legislative proposals which were thought unconstitutional, or injurious to the state. As for the first of these examples, I must confess that I know of no one who has really taken the Senate of Five Hundred, with its division into ten sections, and the Prytanic periods of thirty-five or thirty-six days, for a Solonian institution; if any one really did so, he would deserve no attention. It is a different question whether the Solonian Council of Four Hundred did not also have its Prytaneis, though of course in a different number, and a certain sequence of Prytanic periods.

Mr. Grote, in asserting[a] that Prytaneis and Prytanies, and not merely a later form of them, were unknown to Solonian Athens, is, in any case, asserting more than can be proved. So, too, as regards the great number of 6,000 Heliasts, 600 from each of the ten Phylæ, and their division into ten Dikasteries, I had heard of no one who did not recognise it as an institution dating from a time after Solon[b]; still, of course, it cannot be made out how nearly, or how distantly, it was allied to the Solonian arrangement. The same is true of the Nomothetæ, in the form in which we know them from Demosthenes. And for the γραφὴ παρανόμων, whether it is a Solonian or a later institution, we shall probably remain undecided about it, as about many

[z] Vol. ii. p. 323. [a] P. 324.

[b] Dr. Thirlwall, indeed, as I now see, speaks of 6,000 Heliasts, even in his account of Solon; but this is an oversight, which might easily be excused.

other things, until a criterion is established which will distinguish with precision between what is Solonian and what is not. If any one were to hope that Mr. Grote had proposed such a criterion, he would be disappointed. We are, indeed, told that the Heliastic oath, which Demosthenes designates as Solonian, must necessarily be accounted later, because the Council of *Five* Hundred is mentioned in it; and this is a criterion which no one can doubt, but which is of very little service to us. All we learn from it is, that the oath in that form, in which it occurs in Demosthenes, could not have been prescribed by Solon; (which, moreover, would follow from the language alone, without the mention of the Five Hundred;) but this does not explain how much of the actual contents of the oath may belong to Solon's regulations, and how much to a later redaction.

Mr. Grote says[c], "Many of those institutions which Dr. Thirlwall mentions in conjunction with the name of Solon, are among the last refinements and elaborations of the democratical mind of Athens,—gradually prepared, doubtless, during the interval between Kleisthenes and Perikles, but not brought into full operation until the period of the latter; for it is hardly possible to conceive these numerous Dikasteries and assemblies in regular, frequent, and long-standing operation, without an assured payment to the Dikasts who composed them. Now such payment first began to be made about the time of Perikles." "It would be a marvel, such as nothing short of strong direct evidence would justify us in believing, that in an age when even partial democracy was as yet untried, Solon should conceive the idea of such institutions; it would be a marvel still greater, that the half-emancipated Thetes and small proprietors, for whom he legislated,—yet trembling under the rod of the Eupatrid archons, and utterly inexperienced in collective business, should have been found suddenly competent to fulfil these ascendant functions, such as the citizens of conquering Athens in the days of Perikles—full of the sentiment of force, and actively identifying themselves with the dignity of their community—became gradually com-

[c] P. 325.

petent, and not more than competent, to exercise with effect."

Of course, these observations are quite true. But how far they can furnish us a sure clue for ascertaining what it is possible that Solon may have enacted, and what it is not, will require more accurate consideration. Solon, Mr. Grote often insists, found no Democracy in any part of Greece; down to his time, after the abolition of monarchy, there had been nothing anywhere but Oligarchy (that is, the rule of a privileged class, strictly exclusive as against outsiders) or the government, supported by force, of the persons known as tyrants. Now it is true that the scanty historical data which we find in the writings of ancients for the time immediately before Solon, inform us of nothing but this; and so it cannot be proved that there was anything different in other places. Achaia is the only country of which we hear[d] that in it Democracy, not Oligarchy, followed directly on the fall of the monarchy. This was, beyond a doubt, a very moderate Democracy, one in which participation in political power was not granted indiscriminately to every individual, but only in a gradation regulated in proportion to property: this is what was more accurately called a Timocracy, and what Solon actually introduced at Athens. The Achæan constitution was famous, and was afterwards taken as a model by the states of Magna Græcia; but, unfortunately, we do not know when the fall of the monarchy took place in Achaia; and if any one announced his belief that it might not have taken place till after Solon's time, we could no more refute him, than on the other side any one could be refuted who chose to conceive the event as earlier, as Dr. Thirlwall does, for instance.

Now it is not on this point only, but on all earlier conditions and constitutional changes in almost all Greek states, that our information is slight and defective. Hence I may be permitted to suggest, at least as a possibility, that there may have been Democracies here and there even before Solon's legislation, of course moderate and limited, but still conceding to the mass of the citizens a proportionally gradu-

[d] Polyb., ii. 41, 5; Strabo, viii. 384.

ated share in the essential rights of citizenship. If so, the doctrine, that down to that time nothing was anywhere known but Oligarchy and Tyranny, ought not to have been alleged as one established by facts, but only as a conjecture, however probable; so that the opposite conjecture is not to be absolutely rejected by comparison with it, as wholly unallowable. But I will even lay no stress on this conjecture, because there is no proof that goes to establish it. If there was really no Democratic constitution, and no reasonable distribution of popular rights anywhere in Greece, still there were Democratic movements for a considerable time before Solon; that is to say, there was ill-feeling and discontent among the masses of the unprivileged people at the privileged position of a single class; and there were party leaders who utilised this ill-feeling and discontent in gaining the help of the masses to overthrow the rule of the privileged few, as was done by Orthagoras at Sikyon, Kypselus at Korinth, and Theagenes at Megara. It is true that the majority of the discontented aimed at no more than this, and were satisfied with freedom from the oppression of the earlier rule, without desiring a share in the government for themselves; this was what made it possible for those party-leaders to appropriate the sovereignty after the fall of the oligarchs; and the mass of the people was the more easily pleased with the change, the more they saw the oligarchs kept under, and themselves secured against them.

But the mass is not the whole people. There cannot but have been many whose wishes and ideas went further, and who chafed under the tyranny as much as they had chafed under the oligarchy; while they pictured to themselves a state of things as possible and desirable, in which they, and those like them, should enjoy the freedom and justice that were their due. And it would certainly happen that the measure which constituted what was due, would appear different to different people; and there cannot have been wanting those who demanded equal freedom and equal privileges for all, though they might be far from clear as to the possibility of satisfying such demands, or their capacity of using what was demanded, if realised, rightly, i.e. for

the good of the community. Such phenomena as these had, without doubt, presented themselves to the observation of Solon, the largest mind of his own age, as Mr. Grote rightly calls him[e], in more than one of the Greek states. They presented themselves in Athens as well, though there as yet no tyranny had arisen, for the Oligarchy had succeeded in defending itself against an attempt in that direction. But the discontent and disaffection of the people were as great here as anywhere else; and they had, to guide them, the experience of tyranny which other states had endured. Part of the people, no doubt, were naturally inclined to purchase the fall of the Oligarchy even at this cost; but on the other hand, there were just as many who did not care to exchange one rule for another, and who desired freedom. Of these the unwise would wish for universal equality, the wise for only such freedom as the people was capable of using, that is, gradations of political right. This is how Plutarch describes to us the feeling of the people in Solon's time, and his description carries with it the proof of its truth. Solon belonged neither to those who wished for the continuance of the Oligarchy, nor to those who thought equality without distinctions either possible or desirable; he was of the party of moderates, but had maturely reflected on the measure in which freedom should be bestowed, and on the due and appropriate gradation of rights and privileges as well as of obligations, taking account of property and civic virtue. It is impossible to determine how much, in these respects, he drew from his own reflection, and how much from experience and precedent; but this much is clear, that he placed confidence in the people who had confided constituent powers to him; and that he did not consider the lower classes, for all the oppression they had lived under, unworthy or incompetent to assume a share in departments of state which were far from unimportant. Such functions he calls by the name, not of Democracy (a word which perhaps had not come into existence), but *δήμου κράτος*, which really expresses

[e] Vol. vi. 39, part ii. 67.

just the same thing. He says, *Δήμῳ μὲν γὰρ ἔδωκα τόσον κράτος, ὅσσον ἐπαρκεῖ.*

(*f.*) *List of Solon's Constitutional enactments.*

Now if we ask for the details of Solon's enactments affecting the constitution, we find some which are beyond a doubt, but some also whose real nature and significance admit of different views. It is certain that Solon made the offices of government, which had hitherto been confined to the Eupatridæ, accessible to all citizens of the three first property-classes, without distinction of rank. But he retained some of the more important, especially that of Archon, (to which we may with confidence add those of Prytaneis of the Naukrars, in agreement with Mr. Grote,) for Pentakosiomedimni exclusively. Further, even without express evidence, we may confidently assume with Mr. Grote, that the liturgic obligations were imposed on the rich only, though we know no details of their regulation. They consist in the duty of equipping ships, which fell upon the Naukrars, and in anything there might be at that time in the way of Choregia, Gymnasiarchy, or Hestiasis. Then it is certain that military service as horsemen, or hoplites, was the duty of the three upper classes only, while the Thetes served merely as light-armed.

Again, Solon remodelled the Areopagus. He did so by forming it of ex-archons, whose office had been irreproachably discharged, and entrusting to it besides the jurisdiction in murder cases, and over incendiary and similar crimes, a general supervision of the execution of the laws, and of public discipline. It is a fact, too, that he instituted the annual council of four hundred persons. To this he committed, besides certain branches of administration, the preliminary discussion of all matters to be brought before the public assembly; so that no proposal could be brought before the people, without a decree of the council, (Probuleuma).

Lastly, we know that Solon instituted general popular assemblies, in which all citizens had equal votes, without

any differences based on property; and that he also gave the power of acting as judges to citizens of all classes, without distinction. But there is a difference of opinion in regard to the province of the popular assembly, and the extent and nature of the judicial functions which were assigned to the people. Mr. Grote would have both confined within the narrowest possible limits; it is my opinion, on the other hand, that he has carried this restriction further than was necessary, and further than is reconcilable with sound criticism. Before entering upon the details, I will begin by noticing two passages in which Mr. Grote finds confirmation for his view.

(*g.*) *Passages examined* (*on Powers of Assembly, and Judicial function of People*).

The first of these places is Herodotus, v. 69. It is here said of Kleisthenes; *ὡς γὰρ δὴ τὸν δῆμον, πρότερον ἀπωσμένον πάντων, τότε πρὸς τὴν ἑαυτοῦ μοίρην προσεθήκατο, κ.τ.λ.* From this Mr. Grote infers, that if Kleisthenes found the people excluded from everything, Solon could hardly have established such democratic institutions, as e.g. permanent and numerous assemblies of jurors for judicial business, and the revision of laws.

I shall return to the subject of the assemblies of judges; for the present, two remarks are sufficient. First, the reading in the place of Herodotus, which I have given above as Mr. Grote gives it, is by no means certain. It only rests on a conjecture of Wesseling's; the MSS., as far as I can see from Schweighaüser's edition, the only one I have at hand just now, read *ἀπωσμένον τότε πάντα*, or *τότε πάντων*. Schweighaüser's text gives the former; and the passage is translated "plebem omnem Atheniensium, prius a se alienatum ('spretum' would be better) suas ad partes traduxit." It is plain that *πάντων*, the other reading, is not right, with the words arranged as they are now; either *πρότερον* must be struck out before *ἀπωσμένον*, so that *ἀπωσμένον τότε πάντων* may go together, or *τότε* must be put after *πάντων*, so as to be taken with *προσεθήκατο*.

This is what Wesseling has done, and I do not blame Mr. Grote for having followed him.

But then, what does the place prove? Certainly not that the people were excluded from everything *by Solon's laws*, rather, that they had been excluded from everything *in spite of Solon's laws;* that the *κράτος*, which Solon prides himself on having given the people, had been denied them. Was it impossible for this to have happened at that time? As long as the influence of the nobility was strong in the old accustomed unions of Gentes, Phratries, and Tribes, it could not but happen that the offices of government, though legally open to non-noble persons if wealthy, would fall, in fact, exclusively or principally to nobles. Consequently, the popular rights which Solon had established, though remaining on paper (or rather on wood), came to little practical application. This was why it was Kleisthenes' first measure to deprive those unions of Gentes, Phratries, and Phylæ of their political significance, and to introduce an entirely new division, so as to put an end to the excessive influence of the nobility.

The other place is Aristotle's Politics, ii. 9. 4. The ninth chapter of the second book of the Politics is pronounced spurious by competent judges; that, however, is indifferent to the present question. In any case it is ancient, and I have nothing to say against conceding to it all the authority which the name of Aristotle can claim. This passage says, that Solon gave the people no greater power than was unavoidably necessary, i.e. the power to choose their magistrates, and to call them to account; for, it adds, if the people has not thus much power, it is either the slave or the enemy of its rulers. Now let us assume that this passage involves, as Mr. Grote thinks, the assertion that Solon allowed to the people, i.e. the assembly, no further powers than that of electing its rulers, and of sitting in judgment on their conduct in office. This is to say, that the popular assembly had no competence in any department of government, excepting only the elections, and the Euthyne of the officials. So, then, there would be no one but the magistrates or the senatorial colleges, whether the Four

Hundred, or the Areopagus, who would have to decide on peace and war, or any other public questions, or legislative acts; on all such points, the people could not even claim to have the question put to them.

All this is, to begin with, very unlikely in itself, and then it is certainly more than the writer of the chapter in question meant to assert. It seems to me that Mr. Grote does not distinguish rightly between what is alleged as the author's own opinion, and what is quoted as that of others. He regards as belonging to this latter portion the words (Sect. 2): *ἔοικε δὲ Σόλων ἐκεῖνα μὲν ὑπάρχοντα πρότερον οὐ καταλῦσαι, τήν τε βουλὴν* (the Areopagus) *καὶ τὴν τῶν ἀρχῶν αἵρεσιν, τὸν δὲ δῆμον καταστῆσαι, τὰ δικαστηρία ποιήσας ἐκ πάντων.* But what these words express is obviously a remark of the writer himself. He is correcting the opinion held by some, which he has just quoted, that the Areopagus, and the election of magistrates, as well as the Dikasteries, were new institutions originating with Solon; which he does by indicating that these two institutions were pre-Solonian, and merely retained by Solon, while the introduction of the Dikasteries belonged to his changes. These three institutions, he says, were regarded by many as the principal points of Solon's Constitution, and as establishing his claim to be called a good (*σπουδαῖος*) lawgiver, as having rightly tempered his Constitution by the mixture of oligarchic, aristocratic, and democratic elements. The Areopagus they called oligarchic; the election of magistrates, aristocratic; the Dikasteries, democratic. Others, however, he continues, censured the institution of the Dikasteries, because they were allowed excessive powers, and at the same time the judges were taken by lot. They thought that it was the over-great power of the popular courts that caused the Democracy to become so extreme, as at a later period it became. But, the writer replies to these disapproving critics in their turn, this appears to have resulted, not in accordance with Solon's purpose, but as a consequence of the events which time brought with it. After the Persian war, the common people became conscious of their importance (*ὁ δῆμος ἐφρονηματίσθη*), and worthless demagogues

broke down the resistance of the reasonable politicians (*τῶν ἐπιεικῶν*); this is evidently in allusion to the later extended activity of the popular courts, and also, no doubt, to the introduction of the Dikastic pay. At this point there follow the words first quoted, to which Mr. Grote appeals in favour of his view of the narrow limit of the functions conceded by Solon to the people. But, in their actual context, these words are not meant to pass for a precise and complete statement of the rights granted to the people; they only insist on the two most important rights, which could not possibly be denied to it. The people was itself excluded from the offices of Government, which could only be held by the nobler and wealthier class, which was not included in the *δῆμος*; so if the people had not even the right of electing the magistrates, and sitting in judgment on their conduct, it would evidently have been either the slave or the enemy of the Government. So these two rights were the most essential, and such as Solon simply could not avoid giving to the people; but that he gave them only these and no more, is in no way implied by the passage in question.

(*h.*) *Heliæa and Popular Assembly not the same.*

Still, Mr. Grote seems really to be of opinion that Solon's Constitution did concede to the general assembly of the people no more than those two rights. He calls the popular assembly also "Heliæa;" for he says in a note[f], "I imagine the term *Ἡλίαια*, in the time of Solon, to have been used in its original meaning—the Public Assembly, perhaps with the implication[g] of employment in judicial proceeding."

Of course, there is no doubt that the word might have meant a popular assembly at Athens, as elsewhere; but to shew that it really had the meaning *there*, there is not a single testimony that deserves attention. Mr. Grote cites Tittmann[h], and, in the place cited, the meaning is no doubt established, but for places other than Athens; and further (on p. 217, note 32), a grammarian (Bekker Anecd., i. p. 310)

[f] Vol. ii. p. 328.

[g] ["Connotation" in edition of 1849.]

[h] Darstellung der Griech. Statsverf, p. 215 f.

is quoted, who writes: *Ἡλιαία· καλεῖται δὲ μέγα δικαστηρίον καὶ οἱ χίλιοι δίκασται. ἐν τούτοις ἀρχαιρεσίαι γίνονται καὶ αἱ μέγισται κρίσεις καὶ αἱ διοικήσεις· ἐκαλεῖτο δὲ καὶ μεγάλη ἐκκλησία.* The mention of a thousand judges is enough to make it clear that the grammarian is not thinking of a *general* popular assembly; when he goes on to make these thousand judges undertake elections to offices, and determine on administrative measures, the confusion becomes so obvious as to deprive his assertion of all value. A similar confusion is often found in the inferior grammarians: they sometimes treat the Heliæa as the assembly of the *ἐκκλησιάζοντες;* and again the Pnyx, or place of assembly, as a Dikasterion; and at other times confuse the Ecclesiastic with the Dikastic or Heliastic pay.

I have treated of this point (De Comitt. Ath., p. 69—71 E), and have explained it by the fact, that in later times the popular assembly frequently acted as a court of justice, and many matters came to it for determination, which had previously belonged to the Dikasteries. From such witnesses we can learn nothing that holds good for more ancient times; all the better grammarians, and all other authorities for our knowledge of those times, tell us of the Heliæa only as either a large building used for courts of justice, no doubt the largest and most important of all; or as the assembly of judges, whether all together, or in their sections. Still, we are not to attach much importance to the name; let us confine ourselves to the actual thing. Even Mr. Grote distinguishes, later on, between the Ecclesia and the Heliæa; and we may discover some hint of this distinction as far back as in the note where he speaks of a "connotation" of judicial activity. In a subsequent portion of the work[i], the Ecclesia, or legislative assembly, is distinguished from the Heliæa, as judicial assembly; but he is there speaking of the times after Kleisthenes, and after the battle of Platæa. In vol. iii.[k], on the contrary, he continues to speak of the responsibility of the Archons after a completed year of office (therefore at the *εὐθύναι*), to an Ecclesia acting judicially; and in vol. ii.[l] we find the general assembly of the people

[i] Vol. iv. p. 99, c. 46. [k] Vol. iii. p. 117, c. 31. [l] Vol. ii. p. 328.

as Heliæa, under the guidance of the Senate of Five Hundred. But at what time the distinction between Ecclesia and Heliæa may have come to exist is not expressly stated; we may, however, conjecture, from the note in the place last cited, that it is meant to have begun, at any rate, after the time of Kleisthenes. The words are, "The fixed number of 6,000 does not date before the time of Kleisthenes," (and this, of course, is hardly subject to doubt). Probably, then, the opinion put forward is, that from the time at which the fixed number began to be separated from the mass of the people, to act as juror-judges, the name of "Heliæa" was transferred to them; the other name, "Ecclesia," being retained by the popular assembly. But Mr. Grote refuses to concede for the time before Kleisthenes, not only the number of 6,000, but any number of jurors whatever, separate from the entire citizen body. He only speaks of *direct* popular judicature, in cases which may possibly have been heard over and above the annual judgment of the magistrates. Such trials, if it was really to be supposed that they had taken place, would in any case, he says, have had to be discontinued under the Pisistratids[m], which, of course, cannot be doubted. But jury-courts proper, after the fashion of the later Heliastic courts, did not, he thinks, exist as early as under Solon's Constitution. The name Heliæa meant at that time the general assembly of the people; its functions were restricted to election of magistrates, and the Euthyne of ex-magistrates; all other activities of the popular assembly belonged only to the later development of the Democracy, and especially there is nothing to be said of any legislative activity of the assembly as early as the time of Solon's Constitution.

(*i.*) i. *Dikasteries,* (*a.*) *Passages examined.*

I need not say, to begin with, that none of these assertions can be proved by the testimony of the ancient writers. This leads to essentially different views, such as have, indeed, been maintained by modern writers, as far as I know, without exception. Yet it might be possible that reasons of

[m] Vol. iii. p. 117, part ii. 31.

internal evidence, drawn from the nature of the case, and a more correct apprehension of the conditions of the time, had compelled Mr. Grote to refuse belief to the statements of the ancients, and the views of the moderns, which depend upon those statements. Even this, however, appears to me not to be the case, only supposing that the whole question is reduced to its right proportions, which ought not to be so very difficult. There are two points of principal importance, viz. the participation of the general assembly of the people in legislation, and the existence and activity of numerous judicial bodies formed of sworn citizens. The two points are connected, and in such a way that it is convenient to take the latter first.

We saw above, from Book II. c. 9, of Aristotle's Politics, how, in the judgment of the writer of that chapter, Solon was the founder of the Democracy, especially in virtue of having instituted Dikasteries, taken from the whole body. Plutarch, too, (Solon, c. 18,) mentions in the same way both the right of giving judgment (*δικάζειν*), and that of voting in the popular assemblies (*ἐκκλησιάζειν*), as universal privileges, conceded to all citizens, even to the Thetes. He adds, that though this seemed unimportant at first, it proved of extreme importance at a later time, because most points of dispute (*τὰ πλεῖστα τῶν διαφόρων*) were referred to these judges; Solon having permitted recourse to the Dikastery, even in the cases on which magistrates had to decide. It is plain that by the "Dikastery" Plutarch did not mean the popular assembly, but the jury-court. Many have taken the words to mean, that the jury-courts were only introduced as courts of appeal, so as to provide a remedy against the decisions of the magistrates, as judges of first instance; this is an opinion we shall have to speak of later; but Mr. Grote pronounces on this point as follows: "The statement of Plutarch, that Solon gave an appeal from the decision of the Archon to the judgment of the popular Dikastery, is distrusted by most of the expositors, though Dr. Thirlwall seems to admit it. The supposition of an appeal from the judgment of the Archon is inconsistent with the known course of Attic procedure, and has apparently arisen in

Plutarch's mind from confusion with the Roman Provocatio, which really was an appeal from the judgment of the consul to that of the people. The Athenian Archon was at first a judge without appeal; and afterwards, ceasing to be a judge, he became president of a Dikastery, performing only those preparatory steps which brought the case to an issue fit for decision; but he does not seem ever to have been a judge subject to appeal [n]."

Now we have in fact a piece of evidence in quite express terms, given in Suidas, under the word *Ἄρχων*, as to the earlier judicial power of the Archons, and its later limitation; and precisely this evidence tells against Mr. Grote and for Plutarch. It runs, *κύριοι ἦσαν (οἱ ἄρχοντες) ὥστε τὰς δίκας αὐτοτελεῖς ποιεῖσθαι· ὕστερον δὲ Σόλωνος νομοθετήσαντος οὐδὲν ἕτερον αὐτοῖς ἐτελεῖτο ἢ μόνον ὑποκρίνειν* (better *ἀνακρίνειν*) *τοὺς ἀντιδίκους*. This article in Suidas [o] is unmistakably derived from a trustworthy source. Doubts may be raised against the second part of the statement, viz. that it was in consequence of so early a legislation as Solon's that the Archons were limited to the Anakrisis, or instruction of law-suits. Still, we must regard the first part, which says that the decisions of the Archons were *αὐτοτελεῖς* (i.e. not subject to appeal) only down to Solon's time, as a second and not unimportant piece of evidence besides Plutarch's statement. A case decided by the Archon was *δίκη αὐτοτελὴς* only so long as the decision was not subject to appeal; now, according to Plutarch, there was an appeal in the time after Solon, and so the Archon's decisions were no longer *αὐτοτελεῖς*, which is also involved in the statement from Suidas. Therefore, the two statements agree, which makes it the less permissible for Mr. Grote to assume a confusion in Plutarch's mind with the Roman *provocatio*. And what does he think it was that Plutarch confused with this? A confusion necessarily pre-supposes two things: in this case, the first thing is the *provocatio;* what is the other? Plutarch must have found something in his authorities which could be confused with the *provocatio,* and obviously this can only have been the Appeal which Mr. Grote denies;

[n] ii. 329 n.

[o] Also in *συναγ. λεξ. χρησ.*, Bekker, Anekd., i. 449.

which, therefore, cannot have originated, to begin with, in the confusion in Plutarch's mind. Moreover, Plutarch was not in fact guilty of making that confusion; for, indeed, he expressly distinguishes the appeal to the people, introduced by Publicola, from that to the Dikasts, which Solon introduced; though he does compare the two together, as he was quite justified in doing. Mr. Grote's denial rests on nothing but his own conviction,—it would be truer to say, his prejudice,—that jury-courts with numerous members, among whom there might possibly be persons of the lowest property-class, are inconceivable as existing in Solon's time. I have quoted above his emphatic expressions on the point; "it would be a marvel that the half-emancipated Thetes, and small proprietors, for whom he legislated,—yet trembling under the rod of Archons, and utterly inexperienced in collective business,—should have been found suddenly competent to fulfil these ascendant functions[p]."

Yet Mr. Grote himself did not think it marvellous that Solon should entrust to these very same people, not only the power of electing their magistrates, but also that of passing judgment on their conduct in office. And both were to be done in the general assembly of the people, to which all, without any distinction, had access; and in which all, without any distinction, rich and poor, elder and younger, had an equal vote, and exercised it without being reminded by an oath of the duty of careful and conscientious examination of the case. As Mr. Grote did not think this extraordinary, he ought not to find it so utterly incredible that Solon should have committed the judgment of offences other than those of the magistrates, and the decision of law-suits, to an entirely different assembly. For this assembly, in the first place, though numerous, was far less numerous than the general assembly of the people; secondly, it was composed solely of men of mature age (i.e. thirty at least); thirdly, it was bound by a solemn oath; and fourthly, though it, too, might contain citizens of the lowest class, yet it did not of necessity contain them; and if it did, they were no doubt in smaller numbers. All that our authorities tell us is, that Solon con-

[p] ii. 328.

stituted jury-courts, from which the lowest class was not excluded; they give no information of details, and we are therefore limited to probable conjectures. We may be sure that the number employed was not as large under Solon's enactment as it was later, when 6,000 citizens were annually selected to act as jurors; besides, they would hardly be chosen by lot. Now if they were selected by the confidence of their fellow-citizens, then the risk that a large number of ignorant and incompetent persons might be nominated was, in Solon's time, not very great. Just as little was it to be feared that poor men would be over eager in competing for an office which cost time and trouble, and brought them nothing. We may assume with certainty that the Heliæa, though legally open to all, was practically composed only, or chiefly, of the wealthier or more cultivated class. Again, we have no precise knowledge of the cases in which the Heliastic courts acted; but we may assert with confidence that they were far fewer then than later. Many are of opinion, as I remarked above, that the jury-courts were instituted by Solon only as a court of appeal; they think themselves forced to this conclusion by Plutarch's statement (Solon, c. 18), which was quoted above. Still, Plutarch's words state nothing more than that recourse to the judgment of a Dikastery was open to any one who felt aggrieved or injured by the decisions or decrees of the magistrate. This, however, was the case in later times too, when the magistrates were substantially no more than officials for the formal initiation of legal proceedings, and yet retained a certain limited power of inflicting penalties. But Plutarch's words do not in the least imply that Solon instituted Dikasteries simply and solely for the purpose of receiving appeals from the sentence of the magistrates, considered as judges of first instance.

But, to enable ourselves to judge more correctly of the position held by the Heliastic courts in the Solonian system, we must survey the matter rather more comprehensively.

i. (β.) *Courts other than the Dikasteries.*

In the Athenian state, in the period of which our authorities give us more exact knowledge, there existed besides the Heliastic Dikasteries (omitting the Areopagus and Ephetæ, which need not be introduced here,) various other descriptions of courts; viz. local judges, Diætetæ, and Nautodikæ.

Local Judges.

The local, or district judges, (κατὰ δήμους δικασταί,) were thirty in number; later, after the fall of the so-called thirty tyrants, the number was raised to forty. They held their courts in the several Cantons, or Demes, and moved from place to place for that purpose. Probably there were fixed places for their sittings in the several parts of the country; and it was announced beforehand at what time they were to be present at each. Their province included, at least in later times, only trivial cases (i.e. concerning amounts less than 10 drachmæ); and besides these, substantial injuries (δ. αἰκίας) and cases of assault (δ. βιαίων). According to some authorities, among whom is Demosthenes, they are selected by lot, according to others by popular election; we must assume the latter for earlier times, and the lot for the later age. We are not told when they were instituted; but probabilities are in favour of its having been in the earlier time, perhaps even in that before Solon. For the centralization of all authorities in the capital, which compels the citizens to be there constantly and in great numbers, is far more democratic than oligarchic. In oligarchies and aristocracies, on the contrary, provision is made, as far as possible, to avoid giving occasion to the people for coming to the town from the country or the villages. Moreover, we know of the Athenians, that a great part of the people were ill-pleased to leave their Demes, even at the time of the Peloponnesian war; and a lawgiver like Solon would hardly force people to come into the town for every trifling lawsuit, which would be not merely inconvenient, but, owing to the expenditure of time and money, extremely oppressive to the poorer men.

Diætetæ.

Diætetæ, or arbitrators, were of two kinds,—compromissory, chosen by the parties themselves, by way of compromise; and public, appointed by the State. Compromise, by means of arbitration, was no doubt a primitive custom at Athens, as everywhere else; it has been rightly observed that in earlier times, before the notorious love of litigation set in, it was probably not thought proper for any one to have recourse to a court of justice, till he had made an attempt to come to an understanding with his opponent before a private arbitrator. And no doubt it often happened that a decision was thus come to, in which both parties acquiesced, so that the assistance of the court was not required. This is what Plutarch's story refers to (Aristeides, c. 7), when he says that envy and discontent were created against Aristeides, because, in consequence of his reputation for justice, he as good as deprived the courts of their occupation, by judging and determining all possible cases; *ἀνηρηκὼς τὰ δικαστήρια τῷ κρίνειν ἅπαντα καὶ δικάζειν.* Mr. Grote, too, refers to the place in Plutarch[q], but he has an extraordinary idea that Aristeides won his fame for justice by his discharge of the office of Archon; and he finds in this a proof of his theory that at that time the Archons were still judges themselves. As if an official, whose special function was to administer justice, could become the object of popular dislike, because he exercised his powers justly, and discharged his office so well, that people were content to abide by his decisions. It was only in case of Aristeides' activity being unofficial, that people could take offence at it, and regard it as a disparagement to the Dikasteries officially established for the administration of justice.

The public Diætetæ may be regarded as subordinate judges, or judges of first instance. It is not made out from what date they existed, though the ruling opinion in modern times has inclined to place their institution rather late. Meier, whose treatise on the Diætetæ discusses the whole subject with his usual exhaustive profundity, thinks it

[q] Vol. iii. p. 122, c. 31.

probable that they were instituted on occasion of the revision of the laws undertaken in the time of the archon Eukleides; in which opinion other enquirers of great repute agree with him. I cannot, however, think that the grounds of this opinion are convincing. The principal reason, or, properly speaking, the only one, depends on the mention of the law concerning Diætetæ by the orator Lysias, as one very lately passed. It is in a complaint made by the speaker of a speech against Archibiades, of which unfortunately only the beginning is preserved, in Dionysius of Halikarnassus. He complains that his adversary, who had brought a law-suit against him, claiming discharge of a debt, which claim the speaker alleged to be unfounded, had not listened to his requests, made after the accusation had been preferred, that the matter might be taken before compromissory arbitrators to be chosen by the friends of both parties, until the law about Diætetæ had been passed; his words are, *ταῦτ' ἐμοῦ προκαλουμένου οὐδεπώποτε ἠθέλησε συνελθεῖν, οὐδὲ λόγον περὶ ὧν ἐνεκάλει ποιήσασθαι οὐδὲ δίαιταν ἐπιτρέψαι, ἕως ὑμεῖς τὸν νόμον τὸν περὶ τῶν διαιτητῶν ἔθεσθε.* Unfortunately, these words are the end of the extract in Dionysius; and so we can ascertain only two facts from the fragment: first, that a law about Diætetæ was passed at that time; and secondly, that the law contained something which determined the antagonist not to persist in his former refusal. Then the question arises, As he did not persist in his refusal, what did he do? Did he assent to the speaker's request, and enter into a compromise? This, it would seem, must be negatived; as far as we know, there was no appeal from the decision of a compromissory arbitrator, and the case in Lysias is being pleaded before Dikasts; therefore, if it had previously been pleaded before arbitrators, they must have been arbitrators subject to appeal; and the public arbitrators were so subject. So the antagonist had not done exactly what the speaker wished, but he had done something like it. The speaker had desired him to leave the matter to the decision of compromissory arbitrators; he did not do that; he submitted it to arbitration, but public arbitration, instead of compromissory. Now how far can the law about

arbitrators, which was passed in the interval, have determined him to do so? Must it necessarily be assumed, that public arbitrators were not instituted till the passing of that law? I do not think so. Unfortunately, we have not the law itself. The only quotation which we possess from a law about arbitrators, in Demosthenes against Meidias, p. 545, contains a rule referring to private or compromissory arbitrators; we may accept this as proving at least that the law about arbitrators referred not merely to the public Diætetæ, but to the private ones as well.

Now, it is admitted that these were not introduced by the law in question, but quite of primitive origin; consequently the public Diætetæ too *may* have been older than this law. It is quite possible that the law may have contained more precise rules, confirming, amending, or completing the laws previously in force about both classes of arbitrators. For instance, Th. Bergk[r] has supposed, with reference to the compromissory Diætetæ, that the rule which made appeal impossible from their decisions, may have been introduced by this law; while previously it had been open to the parties to make their compromise on these terms, or not, at pleasure; so that in many cases the function of the Diætetæ was rather an attempt at conciliation, than a definitive decision of the controversy. And in reference to the public Diætetæ, the law might, for instance, contain an extension of their functions. For according to the law of the orator's period, the Diætetæ were competent to act in all private cases without exception. It is not improbable that before, this had either not been the case at all, or not in the time immediately preceding the new law. Now if this law extended the province[s] of the Diætetæ, the case

[r] In the Zeitschrift f. d. Alterthumswiss, 1849, p. 266 f.

[s] It is conceivable, that this may have been done with the view of relieving the Heliastic Dikasteries, and the officials occupied with the preliminary formalities of law-suits. It might reasonably be assumed, that appeals would not be made to the Heliasts from all decisions of arbitrators; and if an appeal was made, at least the officials were saved the troublesome and tedious preliminary formalities, as these had already been gone through before the Diætetæ; and the "acta" of the proceedings before them went as a rule to the Heliasts without addition. Economy might

in Lysias might be explained without difficulty; the accuser had made a claim against the speaker, the amount of which exceeded the competence of public Diætetæ at that time, (i.e. previous to the new law); so that the case could only come either before compromissory Diætetæ, or before a Heliastic court. The former was the course which the speaker desired, but the accuser would not agree to it. Meantime the new law came into existence, making the public Diætetæ competent even for matters of the kind in question. Then the plaintiff no longer refused to bring the matter to arbitration before the public arbitrators; naturally, because recourse to the Heliastic court was still open to him, if worsted before the Diætetes; whereas, if he had agreed to the speaker's earlier demand, and entrusted the case to compromissory arbitrators for final decision, he would have run a risk of losing his case without appeal. Perhaps other possibilities might be imagined with reference to the course of proceedings in this case, in order to explain the plaintiff's original refusal, and his assent subsequent to the passing of the law about Diætetæ; but I am not fond of playing with mere possibilities, and shall be satisfied with that which I have suggested; and even in its case, I shall be quite content, if only the concession is made, that it is at least no more improbable, than the hypothesis based by others upon the fragment of Lysias in question, that public Diætetæ were then instituted for the first time.

The fact which is alleged as a second reason in support of the conjecture in question, is still more easily accounted for. It is true that the older orators, those before Lysias, do not mention the Diætetæ; of course, as their extant orations in no case deal with private suits, there was no occasion for such mention to be made; even Lysias mentions them only once besides, in the fragment of the speech against Diogiton; and in Isæus, in whose time there is no doubt that they existed, no reference to them occurs.

also be an object, as trial before Diætetæ was cheaper both for the state and the parties.

Nautodikæ.

With regard to the Nautodikæ, there is little that can be made out with certainty. None of the orators mention them but Lysias; we learn from him that complaints against ἔμποροι (persons engaged in maritime commerce) were laid before them; and, if we are strict in our interpretation of the orator's expression ἐξεδίκασαν, that such cases were tried to the end, and decided by them.

Besides this, the Grammarians tell us that γραφαὶ ξενίας (accusation of aliens on account of the illegal assumption of citizen rights) as well, belonged to the province of the Nautodikæ; at least, in case of the unqualified person having intruded himself on the Phratries. This is not the place to hazard conjectures as to the explanation of these two-fold functions. Still, it seems to result from the statement of Lysias, that the Nautodikæ did not merely, like other magistrates, receive the accusation, and initiate the suit, but that they had also to decide in the character of judges. This circumstance may be taken to indicate that their origin belongs to very early times; and we have no reason to deny that even before Solon's time, the want may have been felt of a special authority for the litigation of ἔμποροι. However, think as we may about the antiquity of the Nautodikæ, at least we are fully entitled to regard the cantonal judges, and the public Diætetæ, as belonging to the time of Solon.

Archons' Judicial powers not such as to exclude Dikasteries.

In consequence of these considerations, the institution of the Heliastic courts will no doubt appear to us in a somewhat different light, from that in which it appeared to Mr. Grote. Mr. Grote has in his mind no judicial authorities besides the Archons on the one hand, and the Heliasts on the other, (of course, not counting the courts for homicide). For this reason he shews a very intelligible reluctance to ascribe to the Heliasts, at that early time, the extensive functions which they must have had if Solon

assigned to the Archons only the "Instruction" of law cases, and the judicial determination could proceed from no one but the Heliasts. Therefore Mr. Grote prefers to represent the Archons, even after Solon, as having power to judge, as well as to initiate; and in order as far as possible to set aside the popular courts, he will not even admit an appeal to them from the sentence of the Archons, and confidently neglects all evidence which makes against his view.

I have remarked above, how one passage, Plutarch, Solon, c. 18, has been misinterpreted by many, to mean that the Heliastic courts were instituted merely as courts of appeal, while the Archons remained judges of first instance. The correct view is unquestionably as follows: the Archons, in spite of the fact that they were on the whole restricted by Solon to the "instruction" of cases, yet did not entirely cease to act as judges themselves. This is sufficiently clear from the one law concerning the functions of the first Archon, quoted in Demosthenes[t]; "the Archon is to have the care of orphans, and heiresses, and houses that are in danger of dying out, and of widows who remain in the house of their deceased husbands, asserting that they are pregnant. Of all these he is to have the care, and to permit no one to injure them. And if any one does injure them, or act illegally towards them, the Archon shall have power to fine him within the limit fixed for his judicial competence[u]."

Now, as a rule, the Archon could only be aware of the offences here indicated by the laying of an information, and could only impose a penalty after satisfying himself of its truth; that is to say, after investigation. This necessarily implies that he would give the accused a hearing, confront him with the informer, and receive evidence from both parties; and however summary, or informal, the procedure may be held to have been, still the Archon obviously exercised a judicial function, inasmuch as he gave sentence after investigation. The only restriction upon him was, that he could not give judgment for more than a cer-

[t] *πρὸς Μακάρτατον*, p. 1076. [u] *κατὰ τὸ τέλος.*

tain fixed penalty; but if the offence seemed to demand a heavier fine, he had to bring the case before a Dikastery. And the other government officials, to whom the law gave power to impose fines (ἐπιβολὰς ἐπιβάλλειν), no doubt exercised similar judicial functions to those of the Archons, each in his sphere. There is nothing to justify us in ascribing to them a larger judicial capacity in Solon's time; certainly not, as Mr. Grote does, one so extended that there was no appeal from their sentences. Their penal competence, i.e. the amount of the penalty which they had power to impose, may have been greater, and restricted at a later time; this is all that can be conceded; but for the rest, we are not justified in conceiving the judicial procedure as regulated on completely different principles from those which we find in later times, even if a considerable change had taken place in the mode of their application. The leading principle of the Attic procedure is the separation of the two stages of the case, which we may designate, for the sake of brevity, by the Roman names of Jus and Judicium.

Relation of Diætetæ to Dikasteries.

The only exceptions to this universal principle were in the case of the cantonal judges, the Diætetæ, and probably also the Nautodikæ. In all trials but those before them, it was the business of the magistrate, in the first place, simply to receive the complaint, to hear the parties, and then to arrange for further proceedings, according to circumstances, or according to the wishes of the plaintiff. As regards the arrangements which were to be made according to circumstances, I shall content myself in this place with referring to my "Attischer Process[x]." As regards the wishes of the plaintiff, we know that in later times the magistrate asked him whether he wished the matter dealt with before a Diætetes, or not. In earlier times, according to Pollux[y], no private case was brought before a Dikastery, which had not been previously brought before Diætetæ; and he means

[x] Book iv. c. 5 and 6.

[y] viii. 126.

public Diætetæ, as the context is enough to prove, for he has spoken of them immediately before.

Now the first thing to ask is, what is to be understood by that "earlier time?" He says, *πάλαι*. It is admitted that we must refer it to the time before the classical orators; but this time is long; between Solon and Demosthenes there is an interval of more than two hundred years. Now if, according to the above-mentioned opinion of modern enquirers, the public Diætetæ were not introduced before the time of Lysias, the *πάλαι* would not indicate a time before the classical orators, to whom Lysias of course belongs, but rather the earlier period of the classical orators themselves. If, on the contrary, as I have tried to shew above, there is no ground for denying the institution of public Diætetæ to the Solonian age, then there is nothing to prevent us from extending the *πάλαι* as far back as that age.

The second question is, whether what Pollux states was a legal rule, or only custom and tradition, which it was possible to follow or not at pleasure. The latter is the opinion not only of Meier, but of Th. Bergk; who, however, obviously against the context in which the statement in question stands in Pollux, refer it not to public, but to private arbitrators. On the other hand, the former is C. F. Hermann's opinion; and is supported also by the testimony of an ancient grammarian[z], from which we learn that there really was once a law, *μὴ εἰσάγεσθαι δίκην, εἰ μὴ πρότερον ἐξετασθείη παρ' αὐτοῖς* (i.e. *τοῖς διαιτηταῖς*) *τὸ πρᾶγμα*. When this was, cannot be reliably ascertained. Bergk supposes that Demetrius of Phalerum enacted the rule, fixing as law what had previously existed as custom. Granting that it were really to be referred to Demetrius, still there is no reason to assume that he merely sanctioned an earlier tradition, and did not rather renew an old but obsolete law.

[z] In the Appendix to the English edition of Photius, p. 673; and published, with Commentary by Meier, Halle 1834, under the title, "Fragmentum Lexici Rhetorici."

i. (γ.) *Comparison of Province of earlier and later Dikasteries.*

Now suppose that cantonal judges, public Diætetæ, and perhaps Nautodikæ as well, existed besides the Heliastic courts, as early as Solon's time, having been either instituted, or found and retained by him. Suppose it was a legal provision that private cases should go in the first instance before the Diætetæ; commercial cases before the Nautodikæ; trivial matters, and *δικαὶ αἰκίας*, and *βιαίων* in the Demes, before the cantonal judges. Then there can have remained for the Heliastic courts only public accusations, and those private cases in which appeal was made to them from the decision of the other judges. Appeals would certainly not be very frequent; public accusations were at that time undoubtedly rarer than in the later period; the courts of homicide were competent for a not-inconsiderable class of offences. In consequence of the superintending power possessed by the Areopagus over the conduct both of official and of private persons, it may safely be assumed that many offences which subsequently belonged to the Heliastic courts, were at that time brought before the Areopagus[a]. This might take place, either in the form of an accusation proper, in which case the accuser pledged himself to carry the matter through against the accused; or in the form of an information, by which the Areopagus was obliged to investigate the matter *ex officio*, and then to award punishment as it might think fit. Thus there were certainly not an excessive number of cases which had to be taken before a Heliastic Dikastery. They were either such as the Archons, before whom the suit was begun, did not find sufficiently prepared to be disposed of by themselves, by means of a brief enquiry, and a fine imposed on the loser; or

[a] The following assertion, taken by Maximus (in the procem. to Dionys. Areop., Opp. tom. ii. p. xxxiv.) from Androtion and Philochorus, alludes to the time before the restriction of the Areopagus, effected by Ephialtes. Müller, Fragmenta Hist. Græc., Philochorus, p. 17, [Case, Materials, &c., p. 11,] *ἐδίκαζον οὖν οἱ Ἀρεοπαγῖται περὶ πάντων σχεδὸν τῶν σφαλμάτων καὶ παρανομιῶν, ὥς φησιν Ἀνδροτίων ἐν πρώτῃ καὶ Φιλόχορος ἐν δευτέρᾳ καὶ τρίτῃ τῶν Ἀτθίδων.* Cf. Böckh on the plan of the Atthis of Philochorus, in the Abhandlungen d. Berl. Ak. d. Wiss. 1832, p. 12.

those in which the parties, being discontented with the decision of the Archons, made an appeal, and insisted on investigation by the Heliasts. But the principle according to which nothing but the acceptance of the complaint, and the "instruction" of the suit, belonged to the Archon, except in those less serious cases,—that is to say, the separation between Jus and Judicium, must be unhesitatingly acknowledged as for the later times, so also as accepted in the Solonian constitution. At Rome, too, this separation was ancient, and demonstrably older than the legislation of the Twelve Tables. There is no conceivable reason for denying it to the Greeks of the Solonian age. The Archon at Athens, in referring the parties to arbitrators, was doing essentially the same thing as the Magistrate at Rome when he appointed them a "judex," or an "arbiter." It was only in the court of higher instance, the Heliastic court, which in many public cases was also the first and only instance, that Athens, after Solon's legislation, had something which Rome had not. That Solon appointed for the purpose a considerable number of judges lay in the nature of the case; and judicial bodies, consisting of numerous members, were previously known, not only to Athens from the time of the institution of the fifty-one Ephetæ (not to speak of the Areopagus), but also to the poet of the Iliad, who, in the eighteenth book, represents an assembly of the elders sitting to judge a case about the payment in expiation of a slain man's death. Solon's Heliasts were no Homeric elders, no Eupatrid lords; they were persons of mature age, high repute, and for the most part, no doubt, of some property. It is true that poor men were not excluded; but there was, as I have shewn above, no danger of their finding access in excessive numbers, as happened of course in later times.

In later times, the Heliastic courts obtained a sphere of activity that was constantly being extended. This was owing, in the first place, to the permission conceded to suitors to go at once before the Dikastery, even in private suits, omitting the arbitrators; an innovation the date of which cannot be definitely established, but which we may with probability place in the time of Pericles, after the in-

troduction of judicial pay. In the second place, it was owing to the restrictions on the power of the Areopagus, and the abolition of its right of superintendence, as a result of which the Heliasts took its place in all cases in which it had ceased to be competent. In the third place, the magistrates themselves found it advisable to make no use of their right of independent decision, even in the less difficult or important cases, whenever they had reason to suppose that an appeal would be made from their decision. Such a change would result naturally in the course of events, without our being compelled to join Mr. Grote in assuming a radical change of principle, and setting down the separation of Jus and Judicium as not having arisen till a later time. Moreover, it will readily be believed that in the times immediately after Solon, the Heliastic courts really came into action rarely enough, even in cases where, according to his constitution, they ought to have done so; and that public accusations in particular could hardly be brought before them. For we have to remember, that soon after Solon's legislation the Peisistratid tyranny began, and it was certainly not favourable to the popular courts; but after the fall of the Peisistratids, they gained a new organization by the help of Kleisthenes. The number six thousand, and the division into ten sections, or Dikasteries, belong to this time. How many Heliasts there may have been before, and how they were divided, we do not know; but their existence is none the less certain.

(ii.) *Legislation.*

(*a.*) *Nomothetæ in the time of Demosthenes.*

We may now turn to the second of the principal points indicated above, and consider the participation of the general popular assembly in legislation; that is, enquire what power Solon conceded to the popular assembly in respect of the introduction of new, and the abolition of old, laws. The procedure in this legislation, as prescribed in the time of Demosthenes by the laws then existing, though frequently transgressed, is as follows. In the first popular assembly

of the year, the question is laid before the people, whether it would admit proposals for amending or supplementing the existing laws, or not. It is self-evident that on this question there could not but be debates, some advising the admission of such proposals on grounds of utility or necessity, others opposing it. If the people declared in favour of their admission (which would hardly be the case on every occasion), this decision involved nothing more than that it was now open to those who meant to make proposals to bring them under consideration. This was done, according to the law in Demosthenes[b], by going through the form of exhibiting the proposals in public on the market-place near the statues of the Eponymi, that every one might acquaint himself with them. After this had been done, the third regular assembly dealt with the question of nominating a legislative committee, the so-called Nomothetæ. The Nomothetæ were members of the Heliæa, and therefore men over thirty years of age, and on their oath. Details of the manner of nomination, whether by lot or by election, are not given. All we learn is, that the people determined the number to be nominated, and the time for which they were to serve, according to the number and nature of the legal proposals brought forward; and that the same was the case as to the payment to be made for their trouble.

The proposed measures had been made accessible to every one's observation by their exhibition near the Eponymi. Nevertheless, before the Nomothetæ were nominated and their sittings began, they were read aloud by a clerk in every assembly that took place in the interval, that they might be the more certain of being generally known. The proceedings before the Nomothetæ were carried on just in the form of a lawsuit. The proposers, who wished to have an old law abolished and another put in its place, or to have any changes introduced into the existing legislation, appeared as plaintiffs: those who pronounced the existing laws to be good and adequate appeared as defend-

[b] κατὰ Τιμοκράτους, p. 705, 88.

ants. To guard against the want of a proper defence of existing law, and proper precautions against innovation, a number of Synegori, or public advocates of the existing laws, were elected by the people for that purpose, and others might of course join them of their own accord.

(*β.*) *Nomothetæ in Solon's time not improbable.*

This is the procedure, as we learn it from Demosthenes. F. A. Wolf, in the Prolegomena to the Leptines, p. 133, considers the institution of Nomothetæ comparatively late; in the earlier period, he thinks *laws* were dealt with just like *Psephisms* (that is, special proposals made in view of particular cases, and for transient purposes), by the public assembly only: and therefore the people collectively was not, as under the institution in question, absolutely limited to the decision of the question whether to admit amendments on the laws or not, but had the right of examining the actual proposals, and of accepting or rejecting them. I have declared myself against this view, and pronounced[c] the procedure before Nomothetæ to be the more ancient; and the other, in which no distinction is made between laws and Psephisms, to be an abuse which forced itself in at a later time. In this, as I think, the nature of the case as well as the testimony of the ancients is on my side. It is plain of course that some points in the regulations, such as the exhibition near the Eponymi, and the payment to the Nomothetæ, are not derived from Solon, but belong to a later time. But these points do not touch the essence of the institution itself, which we may regard as very ancient in spite of them. In thinking it to be Solonian, I am less influenced by the evidence of the orators, (of whom Demosthenes ascribes it expressly to Solon, Æschines to the founder of the Democracy, which most naturally means Solon), than by the fact that I can find absolutely no rational ground for denying it to Solon. It displays the wise foresight of the legislator, in desiring to take precautions to prevent the duty of passing judgment on the laws from

[c] De Comitiis Ath., 265, ss.

devolving on the mass of the people as it comes together in the popular assembly, composed of young and old, rich and poor, rude and cultivated, without any distinction.

On the contrary, he provides that every legislative proposal should be subject to the decision of a smaller number of older men, selected and sworn, after hearing and carefully examining the arguments alleged by the proposer of the measure on the one hand, and by the advocates of the existing law on the other. This amounts to nothing less than, strictly speaking, to withdraw the legislation from the general assembly of the people, and only to concede to it, what may be conceded without scruple, the right of deciding whether proposals of amendment are to be permitted at all, or not. On the other hand, a procedure in which the assembly of the people decides for itself and by itself on laws as well as Psephisms, is only conceivable in a Democracy which is already very advanced; and the orators who have been referred to complain loudly of this abuse, as having recently become prevalent. Demosthenes[d] says it has brought things to such a pass, "that almost every month laws are carried to further the interests of the orators." — "There is no longer any distinction whatever between Psephisms and laws; the laws, with which the Psephisms should be in accordance, are later than the Psephisms themselves."—"Some people of influence, as I hear, succeeded in getting themselves permission to bring forward laws whenever and however they pleased; and since then you have so many laws in contradiction with each other, that you have felt the necessity of electing a special commission to enquire into and indicate the contradictions in the laws; a business which shews no signs of coming to an end." The expression "as I hear," (ὡς ἔγω πυνθάνομαι,) might lead to the conjecture that the first author of the abuse was still remembered in Demosthenes' time, and that therefore the abuse itself could not be very ancient; but that is of no importance. Only it is certain that if there are no forms of legislation but those two to choose

[d] Dem. c. Timokr., p. 744, in Leptinem, p. 484 f.

from, our choice which of the two is Solonian, and which is not, cannot be doubtful for a moment. I said, "If there are no forms but these to choose from," because a third course may no doubt be imagined, that is, that Solon might have ordained neither the one nor the other form of legislation, but have entrusted it to some existing authority, e.g. the Areopagus. However, as there is no trace or indication of such a measure, we may leave this idea to those who are fond of amusing themselves with mere possibilities. But there is yet a fourth alternative, and this is the one which Mr. Grote affirms; viz. that Solon neither entrusted legislation to the general assembly of the people, nor instituted a legislative committee for the purpose; but that he simply framed no rules at all as to the way in which, in case it should be required, his legislation might be amended, unsuitable laws set aside, and new ones put in their place. Let us hear Mr. Grote's reasons.

(γ.) *Grote's arguments against Solonian origin of Nomothetæ.*

Such a legislative committee as that described above, Mr. Grote is sufficiently debarred from regarding as an institution of Solon, by the fact that he does not regard the Heliasts as Solonian. This is quite clear; if there were no Heliasts, there was not a legislative committee composed of Heliasts. We may hope that this argument is adequately met by what has been said about the Heliasts in the preceding section. And it was equally impossible for Solon to enact that proposals for new laws should be exhibited near the statues of the Eponymi, which did not exist in his time. This, too, is perfectly clear; and yet neither this, nor other traces of a later time, which are apparent in the law quoted by Demosthenes, have deterred me, and other careful enquirers who agree with me, from regarding the institution of Nomothetæ as Solonian. For we supposed that all such traces only pointed to a modification of the procedure adapted to later conditions, and did not touch the essence of the institution itself. Mr. Grote[e], in saying

[e] Vol. ii. p. 324 n, part ii. c. 11.

that "this admission seems to him fatal to the cogency of my proof," seems to me, on the contrary, to misapprehend the real nature of the case. I have never said anything different from what I say now, viz. that those traces do not force us to doubt the greater antiquity of the institution, if it is probable on other grounds. Mr. Grote, on the contrary, speaks as if the later form necessarily compelled us to believe in a later origin of the institution itself.

Finally, we come to his main argument; "Solon," we read in the margin[f], "never contemplated the future change or revision of his own laws;" and the text[g] says, "To suppose that Solon contemplated and provided for the periodical revision of his laws, by establishing a Nomothetic jury, or Dikastery, such as that which we find in operation during the time of Demosthenes, would be at variance (in my judgment) with any reasonable estimate either of the man or of the age. Herodotus[h] says that Solon, having exacted from the Athenians solemn oaths that *they* would not rescind any of his laws for ten years, quitted Athens for that period, in order that he might not be compelled to rescind them himself. Plutarch[i] informs us that he gave to his laws force for a century absolute." "Gellius[k]," this is added in a note, "affirms that the Athenians swore, under strong religious penalties, to observe them for ever." "Solon himself, and Drako before him, had been lawgivers, evoked and empowered by the special emergency of the times; the idea of a frequent revision of laws by a body of lot-selected Dikasts, belongs to a far more advanced age, and could not well have been present to the minds of either. The wooden rollers of Solon, like the tables of the Roman decemvirs, were doubtless intended as a permanent 'fons omnis publici privatique juris.'"

It may be that this or that reader will be convinced by argumentation of this kind; for my own part, all that Mr. Grote puts forward seems to me devoid of cogency, and part of it to be even capable of being turned against him. He appeals principally to the precautions which Solon is said to have taken to secure the unchanged per-

[f] Vol. ii. p. 325, part ii. c. 11. [g] Ib. [h] i. 29. [i] Solon, c. 25. [k] ii. 12.

manence of his laws. The statements of Plutarch, and *à fortiori* that of Gellius, are of course not credible to any one like Mr. Grote; but perhaps he holds Herodotus' testimony to be reliable. So I will let it pass too, though I must confess that the matter is not quite clear to me. For I do not see to what extent, and in virtue of what position, Solon, after he had fulfilled his commission and laid down his office, and after his laws had been accepted by the people, could have continued to have authority to repeal those laws, to the inviolate observance of which he had bound the people. But, doubtless, Mr. Grote understands that better, and so I will let my own scruples be. But, then, what follows from Herodotus' story? Just this; that Solon feared the Athenians would be inclined to change his laws too soon; and that, therefore, he bound them to a strict observance of the code for ten years at least, that they might learn their value by experience. After this term, which was really not very long, they were to cease to be bound, and to be free to make changes. Solon's own remark in Plutarch[1] goes to shew, that he by no means regarded his legislation as perfect, or beyond improvement. Plutarch says that when he was asked whether he had given the Athenians the best laws possible, he answered, "the best which they would have accepted;" that is, not absolutely the best, but only as good as were possible with the existing disposition and sentiments of the people. So this implies the admission that, under other conditions, and with different dispositions and sentiments among the people, other laws would be better. The knowledge that men's relations and sentiments do not continue immutably the same, and that, therefore, changes of law will become desirable or necessary, is not so abstruse that we should be forbidden to give credit for it to one of the seven sages, who was undoubtedly the wisest man, "the largest mind of his own age[m]."

There is in Plutarch another story that bears on this point, not in the life of Solon, but in the Symposium of the Seven[n]: "Tidings came from the Spartan Chilon, that

[1] Solon, c. 15. [m] Grote, vol. vi. 39, part ii. c. 67. [n] c. 7.

he renounced his friendship with Solon, because the latter had said that laws must be subject to change (*τοὺς νόμους μετακινητοὺς εἶναι*)." The anecdote may be an invention; I do not mean to deny that. But it not only gives a good indication of the difference between Spartan and Athenian feeling, but also is quite in accordance with the sagacity with which Solon may be credited. And how do we know that there had not been by Solon's time plenty of experiences which would call a legislator's attention to the inevitable necessity of revising and amending laws from time to time; and would force him to devise a method for doing so, with the greatest convenience and the least danger[o]? We are quite unacquainted with the details of the history of any other Greek state [of the time]; we only know that in the Solonian time, and that immediately preceding, there had been conflicts between the oligarchy and the commons all over Greece, accompanied by numerous political revolutions and constitutional changes; all this might be of service to a reflective observer. Indeed, Athens herself afforded a striking example of the necessity of changing existing laws in conformity with circumstances. It was not quite thirty years since Drako had made his laws, and the impossibility of retaining them had already become so evident, that Solon was obliged to repeal the whole mass, excepting only a very few. He could not but be aware that his own laws also would require many changes in course of time, and in acting as he did he shewed his wisdom. In the first place, he appointed an interval of ten years, which was neither very long nor very short, during which the Athenians were to begin by making trial of his laws, without being allowed to make any changes in them. Then, after the expiry of this period of probation, alterations were to be allowed; but in permitting this, he provided at the same time that such changes, or even pro-

[o] Even Zaleukus, the first author of written laws, is not said to have forbidden changes, but only to have provided, in a way which must be admitted to have been somewhat rude, that they should not be proposed on frivolous grounds. See Demosth., *κατὰ Τιμοκρ.*, 744, and more in Heyne Opusc. acad. ii. p. 30.

posals for change, should not be permitted, unless the need for them was generally recognised; and that if proposals were permitted to be made, they should not be decided upon without the most careful examination, or without the existing law being defended against the innovation. Further, this act of decision was not to devolve upon the populace, but on a smaller number of men of mature age and tried experience. All this was most appropriately provided for by the institution of the Nomothetæ; and if, as Mr. Grote thinks, Solon did not make any such provision, this would betray such a want of foresight as we ought not to lay to the charge of the wisest man of his age. I may add, to supplement the discussion, that there was a story at Athens, that Solon himself had once spoken before the judges, against some one who had proposed an unsuitable law. The account is given in Demosthenes[p]; it proves, at least, that no doubt was felt of the fact that judicial procedure had been applied to laws in Solon's time, and may, therefore, pass as a piece of testimony to be added to the statements of the orators, who designate the law of Nomothetæ as Solonian, though it was not Solonian in the form in which they knew it.

§ 6. Kleisthenes.

(*a.*) *Kleisthenes made only* 100 *Demes.*

I have now disposed of the principal points in which Mr. Grote's views about the Solonian constitution appeared to me to require correction; and so I turn to the succeeding legislator, Kleisthenes; who on the one hand abolished, or found substitutes for, some of the pre-Solonian institutions which Solon had allowed to remain; and on the other, gave greater space, and a freer developement to the institutions founded by Solon. The statements of the ancients about Kleisthenes are of a very general and indefinite kind, so that we have little detailed knowledge of his measures. We are specially told that he essentially modified the for-

[p] κατὰ Τιμοκράτους, p. 765.

mer divisions of the people, and established in place of the four ancient Ionic tribes ten new ones, which were named after native heroes, as their Eponymi. These tribes he re-divided into smaller sections, or Demes; making each tribe contain ten, according to the account of Herodotus, so that there were a hundred in all. For as Valckenaer rightly saw [q], no other interpretation of the words of Herodotus, 5. 69, *δέκα δὲ καὶ τοὺς δήμους κατένειμε ἐς τὰς φυλάς*, is philologically possible. Some writers have made up their minds to assume a transposition of the words which would be unprecedented, and in that context utterly pointless, viz., that *δέκα τοὺς δήμους κατένειμε ἐς τὰς φυλάς*, was put for *τοὺς δήμους κατένειμε ἐς τὰς δέκα φυλάς*, the latter being the real meaning, and the expression which ought to have been used. But this must be set down as simply that spurious kind of historical criticism, which does not shrink from twisting the words in the witness's mouth to favour preconceived opinions. Unhappily, we see Mr. Grote joining in such criticism as this; "I incline," he says [r], "as the least difficulty in the case, to construe *δέκα* with *φυλάς*, and not with *δήμους*." Of the only correct construction, he says [s], "such construction of the words, however, is more than doubtful, while the fact itself is improbable." The construction can only be thought doubtful, owing to imperfect linguistic knowledge; and if the fact itself is really improbable, only one of two courses remains open to us; either to pronounce the place corrupt, or to say that Herodotus has made a mistake, or at least expressed himself inaccurately, and given a round number, instead of the actual number. This seems to be C. F. Hermann's opinion [t],

[q] The same view is taken by Ross "Demen von Attika," Halle, 1846, p. 3. Westermann in the Zeitschr. f. d. Alterthümswiss, 1848, p. 37, and in Pauly's Realencyklop., ii. p. 952. Meier in the Hall. allgemein. Lit. Zeit., 1844, p. 1386. Dr. Thirlwall, too (vol. ii. p. 82), has the right view. [Grote has modified the note on this passage of Herodotus in the later editions, by approving of the suggestion that *δέκα* may be taken with *κατένειμε*, in the sense of *δέκα μέρη*, but the places which he quotes hardly bear him out.]

[r] [The reference is to the note of vol. iv. p. 177, in the edition of 1849, now modified as stated in note q above, (vol. iii. p. 113, ed. of 1862).]

[s] Vol. iii. p. 113, part ii. c. 31. [t] Staatsalterthümer, iii. 12. The later editor agrees with Schömann.

and it is unquestionably the most rational, if we are once convinced that the fact, as Herodotus states it, is improbable in itself. If we ask for the reasons which make it so, Mr. Grote mentions the two following:—

First, if the change in the number of Demes had been so considerable, that a hundred established by Kleisthenes became at a later time a hundred and seventy-four (for that is the number alleged), surely some positive testimony to the change would have been found. But would this be so, even in case the transition took place not all at once, but gradually, and not noticeably? I conceive that in that case, the absence of positive testimony would not seem remarkable; but Mr. Grote's observation deserves special notice, for the reason that it recognises the critical principle, that important changes of existing institutions are not to be readily believed in without positive testimony. Later, when he speaks of Perikles, we shall have occasion to remark how far he has remained true to his principle.

His second reason is[u], that "Kleisthenes would indeed have a motive to render the amount of citizen population nearly equal, but no motive to render the number of Demes equal, in each of the ten tribes." If I understand this rightly, Mr. Grote thinks that Kleisthenes found the Demes existing, and that there is no discoverable reason why he should not have retained unchanged those which he found, without troubling himself whether there was an equal number of Demes in each tribe, as long as the number of citizens in the tribes was tolerably equal. Of course, there can be no doubt that Kleisthenes found existing Demes, or cantons; how many there may have been of them we do not know; but we may assume with certainty, that they were very unequal in size and in population.

Further, it is clear that in organizing certain administrative districts as subdivisions of the tribes, Kleisthenes would have to make them neither too large nor too small; a certain average area must have appeared to him to be the right one. Many of the existing cantons might more or less approach to this area; and those there would be no

[u] Vol. iii. p. 113.

reason for changing; but if there were some which were too large, or, as would be more common, too small, then the former would have to be divided, several of the latter amalgamated. This might be done without any violent change or revolution in existing relations. By uniting smaller places into a single administrative district, or throwing part of a canton into one, and part into another district, nothing would be taken from them that they had before, but only something given them that they had not. It would not destroy the local institutions, of which Mr. Grote reminds us, or the festivals or temples of particular localities. So, if Kleisthenes organized a certain number of administrative districts, taking as his pattern for size the greater number of the existing cantons, and if in doing so he preferred an equal number for each Phyle to making them of different numbers, and the round number a hundred to any odd number, there is nothing extraordinary or incredible in that. And there is this further evidence for the total of one hundred, that the Eponymi of the Demes (for they, too, worshipped certain heroes as their Eponymi) are mentioned under the name of the hundred heroes[x].

The hundred newly-organized administrative districts were called δῆμοι; a name that was no doubt older, but was newly applied to mean a district of this nature, and ten of them made a Phyle. On this it must be further remarked, that locally contiguous Demes did not by any means always belong to the same Phyle, but that the Demes of one and the same Phyle often lay far apart, and were separated by others, which belonged to other Phylæ; a circumstance which, as far as I know, I was the first to draw attention to[y]. As regards the gradual increase of the number from a hundred, to a hundred and seventy-four, I must confess that I am quite unable to see why it has struck

[x] Herodian, π. μον. λεξ., p. 17, 8. G. H. Sauppe, de demis urbanis Athenarum. Programm d. Gymn. Zu Weimar, of 1846, in which all the extant names of these heroes are collected.

[y] In a Programme of 1835. Cf. Antiquit. jur. publ. Gr., p. 202, 6. Mr. Grote remarks the same circumstance, vol. iii. p. 113.

many critics as so inconceivable, and therefore so incredible. If a Demos had grown considerably in population, and either a new village had sprung up, or a small one had become large within its boundary, it might naturally seem advisable to make two Demes of it. In this way there arose at a later time out of the Deme Pæania, an Upper and a Lower Pæania; and so we find Upper Ankyle and Lower Ankyle, Upper Agryle and Lower Agryle, Upper Pergase and Lower Pergase, Upper Potamos and Lower Potamos; in short, a gradual increase of the Demes by about three-quarters of their former number, is not in the least less probable, than what others have thought more so, viz., that Kleisthenes found the number of a hundred existing, and increased it to a hundred and seventy-four, or something like it.

(*b.*) *Kleisthenes made* 50 *Naukraries.*

We saw above that the four ancient Ionic tribes were supposed to have been divided into three Trittyes each, every one of these containing four Naukraries; and it is certain[z] besides, that the ten tribes which dated from Kleisthenes, at a later time included Trittyes. We have no further direct testimony about Kleisthenes himself, than that he divided his tribes into Naukraries as well as Demes, but in doing so, raised the former number, forty-eight, to fifty, five to a tribe. Whether he made Trittyes as well, is not absolutely clear[a]; it is at least not impossible that this division of the ten tribes was not introduced till later, when the Naukraries had ceased to exist. Its purpose was connected with military service. But granting that it originated with Kleisthenes himself, that would be no rea-

[z] See Demosthenes on the Symmories, p. 184. Æsch. Ctes., p. 425. Plat. Republ., v. p. 475, belongs to this subject too, for he mentions the Trittyarchs as subordinate commanders, under the Strategi.

[a] Of course, no one is likely to notice the absurdities of Michael Psellus, p. 103. Boiss. Κλεισθένης εἰς τριάκοντα μοίρας τὴν Ἀττικὴν ἅπασαν διανείμας, ἐπειδὴ τὸ μὲν αὐτῆς ἐπιθαλαττίδιον ἦν, τὸ δὲ παρὰ τὸ ἄστυ συνέστρωτο, δέκα μὲν μοίρας τῇ παραλίᾳ συνέτευχε, δέκα δὲ κατέστησεν εἰς τὴν μεσόγειον, δέκα δὲ ἀστυνόμους ἐποίησε, καὶ τὸ τριτημόριον τριττὺς ὠνόμαστο.

son for denying to him, as Mr. Grote[b] is inclined to, the division of his tribes into five Naukraries apiece. We know from Herodotus[c], that at the time immediately before the Persian war, the Athenians possessed only fifty ships, a number which corresponds exactly with that of the Kleisthenian Naukraries[d], and this coincidence can hardly be regarded as accidental. Mr. Grote[e] thinks it "hardly probable that there should be two co-existing divisions, one [the Trittys] representing the third part, the other [the Naukrary] the fifth part, of the same tribes." But why should not Kleisthenes have found the division into Naukraries, only with two added, convenient for the purpose of the naval and cavalry service, if the resources of the country could only furnish fifty ships, and a hundred horsemen? Whereas a division by Trittyes might be more suitable for the infantry service.

(*c.*) *Kleisthenes admitted no free native Athenians to the Franchise.*

Kleisthenes[f] received into his newly-formed ten tribes a great number of people, who had previously not been citizens; *πολλοὺς γὰρ ἐφυλέτευσε ξένους καὶ δούλους μετοίκους*, are the words as they stand in Aristotle[g]; but the right explanation of them is not known with certainty, and many writers have held the reading to be corrupt, and proposed emendations. Mr. Grote[h] holds it to be sound, and thinks that *δοῦλοι μετοίκοι*, as opposed to *ξένοι μετοίκοι*, means a superior order of slaves, with regard to which he proceeds to explain further in a note. He thinks that "there must always have been in Attika a certain number of intelligent slaves living apart from their masters[i], *in a state between slavery and freedom*[k], working partly on condition of a fixed payment to him, partly for themselves, and perhaps continuing to pass nominally as slaves, after they had bought their liberty by instalments."

[b] ii. 277, part ii. c. 10. [c] iv. 89. [d] Cf. Case, "Materials, &c.," p. 19 and 20. [e] l. c. [f] Cf. Case, "Materials, &c.," p. 17, ff. [g] Polit. iii. 1. 10. [h] Vol. iii. p. 109 and 10, part ii. c. 31. [i] *χωρὶς οἰκοῦντες*, omitted by Schömann. [k] These words omitted by Schömann.

This would make them not strictly speaking a superior order of slaves, as they are called in the text, but freedmen, who could only be called slaves by an abuse of language. I must let this explanation of the passage pass (Meier[1] has also taken δοῦλοι as freedmen in this place), though the expression δοῦλοι μέτοικοι still remains doubtful, and is found in no other passage. But what seems to me far more doubtful, is a third class of persons that Mr. Grote sets up, besides both the ξένοι μετοίκοι and the freedmen, as having been received by Kleisthenes into his tribes. These he describes as native Athenians, who had indeed a certain inferior franchise, but had been excluded from the old Phylæ, Phratries, and Gentes, and the rights connected with them, such as eligibility to seats in the senate, and to magistracies. Of this class of persons Mr. Grote has informed us above, in an earlier part of his work[m], that even in Solon's time their number was probably considerable; and he gives it as his opinion in the same place, that they were discontented with Solon's constitution, because he did not admit them to full citizenship, and that this made them the more inclined to attach themselves to Peisistratus. For they all, without respect of property, belonged to the fourth class[n], and therefore, like the Thetes, possessed no other political right than that of a vote in the general assemblies of the people[o]. The origin of such a class, we are told, is to be explained by the numerous immigrations and settlements of foreigners, whose descendants, as they were very rarely received into the Gentes, Phratries, and Phylæ of the old citizens, were "native Athenians," but yet, down

[1] De Gentil. Attica, p. 6.

[m] Vol. ii. p. 332, part ii. c. 11.

[n] [It is a further difficulty, not noticed by Grote, that unless these persons had land, the fourth class was their natural place, and the reform of Kleisthenes would not directly improve their position. If, on the other hand, they had the right, confined as a rule strictly to citizens, of holding land, their ambiguous political position as conceived by Grote becomes more difficult to believe in than ever.]

[o] [In c. 31, Mr. Grote denies them this right for the period before Kleisthenes, though in c. 11 he conceded it to them for the period after Solon. This contradiction probably results from the entire silence of the authorities, which leaves the political position of any such class to rest upon conjecture.]

to Kleisthenes, only as it were half-citizens. I have very strong doubts of the existence of this class. It is certain that there were many immigrants, and descendants of immigrants, in Attika; but they would always belong simply to the class of Metœki: that there ever was an intervening class between Metœki and full citizens, is nothing but a fancy of Mr. Grote's.

(*d.*) *Difference between Orgeones and Gennetæ.*

But Mr. Grote rightly pronounces in favour of the view that Kleisthenes, when he organized his new tribes, left the old Phratries and Gentes as they were. From this time, therefore, they ceased to be connected with the Phylæ; new citizens were incorporated in a Phyle, but not in a Phratry, or Gens; and the same is true in later times also, though it happened in exceptional cases that a new citizen was permitted to enter a Phratry, and though there were ways by which the children of new citizens could be received, not merely into a Phratry, but even into a Gens. But this is not the place to discuss these points; only I will take this opportunity of saying a word about the Orgeones. Isæus, Mr. Grote says[p], "uses ὀργεῶνες as synonymous with γεννῆται." The expression is incorrect; it would be more correct to say, that Isæus uses the word in such a context, that we might be induced to suppose it to be synonymous with Gennetai. It only occurs once in that orator[q], where he is speaking of the introduction of an adopted son among the Orgeones of his adoptive father. Everywhere else Isæus, like the other orators, calls the members of a Gens γεννῆται; and no rational ground can be discovered that should have made him exchange the right and appropriate term for another in this passage, and say Orgeones when he meant Gennetai. I conceive the fact of the matter to be, what I have explained it to be in a commentary on the passage in question. New citizens, even if they or their descendants were received into a Phratry, very rarely obtained an entrance into a Gens

[p] Vol. ii. p. 267, part ii. c. 10.

[q] Or. ii. 14.

of old citizens; but they had, just like the others, their private *sacra;* and several families, sprung from the same ancestor, had the same *sacra,* inherited from their common forefather, in common with each other. It was natural that they should remain in union for this purpose, and such associations, in virtue of common *sacra,* were analogous to the Gentes of the old citizens; they were not called γένη, because that name served exclusively to indicate the Gentes of the old citizens; there was no more appropriate name for them than Orgeones; and it is obvious that an introduction among the Orgeones might serve as proof of adoption, just as well as an introduction among the Gennetai. After this digression, we return to the institutions of Kleisthenes.

(*e.*) *Institutions connected with the Ten Tribes.*

It is well known that in connection with the new tribal division, there took place the augmentation of the Council from four hundred to five hundred members. In connection with the same change, there was established the order of the Prytanies in the Council, according to which the ten tribes, in a succession determined by lot, held the presidency (Prytaneia) during a tenth part of the year, that is, thirty-five or thirty-six days. There is no tradition of a similar arrangement, consisting in successive presidencies, and the representation of each of the four tribes by a hundred members, in the Solonian council, though the fact cannot be called improbable in itself[r]. Again, there can be no doubt that the number of six thousand Heliasts, six hundred from each tribe, was introduced in or after the time of Kleisthenes; but whether by himself, or not till later, must remain undetermined. Further, we know of regular assemblies in each of the ten Prytanies, one at first, and several at a later time; here too, however, it is uncertain whether this system was enacted by Kleisthenes himself, or not till later. And lastly, a considerable number of magistrates were taken according to tribes, one from each. Some of these magis-

[r] The oligarchical council of 400, in the last years of the Peloponnesian war, also divided itself into Prytanies. Thuc., 8. 70.

tracies are certainly older than Kleisthenes' time, so that his constitution can only have determined their number; others may be of later origin. Nothing can be made out with certainty on any of these points, and Mr. Grote has not undertaken to frame conjectures on them, a reserve which only demands approval. The highest praise is also due to the observations which are brought together at the conclusion of the chapter on Kleisthenes[s], to assist in realising the great importance and deep-reaching effect of the changes which he introduced: only there is one point on which I cannot suppress my doubts; that is, whether Mr. Grote is right in denying Kleisthenes to be the author of a very important change, viz. the introduction of the lot instead of the show of hands (Cheirotonia) in the election of several magistrates, among whom are notably the nine Archons. The importance of the matter, and the respect which Mr. Grote's views always demand, may be my excuse, if I discuss this question in some detail.

(*f.*) *The Lot introduced by Kleisthenes.*

It is true that there is no express evidence ascribing the introduction of the lot to Kleisthenes; but there is the testimony of Herodotus[t], that as soon as fifteen or sixteen years after Kleisthenes' legislation, the lot was employed in the nomination of Archons. Now, as we know of no one else in this interval to whom the introduction of so important a change could be ascribed, nor of any particular event which might have caused its supplementary enactment, it is obviously in accordance with all rules of probability to regard it as a part of the Kleisthenean legislation. That is what I did[u], and most, and the most careful, enquirers have agreed with me: Mr. Grote,—because the introduction of the lot at such an early time strikes him as incredible, for reasons which he does not expressly state, but which may be conjectured, and which I have to discuss below,—begins by endeavouring to invalidate the testimony of Herodotus. Herodotus designates the Polemarch (one of

[s] Vol. iii. p. 137. [t] vi. 109. [u] De comit. Athen. 311.

the college of nine Archons) at the battle of Marathon as selected by lot (*κυάμῳ λαχών*). "I cannot but think," says Mr. Grote[v], "that in this case he (Herodotus) transfers to the year 490 B.C. the practice of his own time. The Polemarch, at the time of the battle of Marathon, was, in a certain sense, the first Strategus; and the Strategi were never taken by lot, but always chosen by show of hands, even to the end of the democracy. It seems impossible to believe that the Strategi were elected, and that the Polemarch, at the time when his functions were the same as theirs, was chosen by lot."

Against this view, the following facts must be borne in mind. Mr. Grote can know nothing of the functions of the Polemarch at the time of the first Persian war, beyond what is to be ascertained from Herodotus' account of the battle of Marathon. Now he says[x] that at that time the Polemarch had an equal vote in the council of war with the Strategi, all ten of whom were then with the army[y]. Therefore, if the votes of the generals were divided, the Polemarch had the casting-vote. The supreme command went by daily rotation among the Strategi[z], and in this connection there is no mention of the Polemarch; but in the battle, the Polemarch had the command of the right wing. That is all. It does not go to prove that the Polemarch's functions were the same as those of the Strategi, but only that he shared some of their functions with them. Probably he never had the supreme command, and when Mr. Grote, in another part of his work[a], calls him the president of the ten Strategi, this is more than the narrative of Herodotus entitles him to say; the presidency seems rather to have gone by rotation among the ten Strategi. Who was president at the discussion about the battle of Marathon cannot be determined from Herodotus' account; but Miltiades appears clearly as the principal person. It was from him that the proposal to give battle emanated; four of the Strategi had assented, five dissented; this is what is conveyed by Herodotus' words, *ἐνίκα ἡ χείρων τῶν γνωμέων*. Then the

[v] Vol. iii. p. 126, note, part ii. c. 31. [x] vi. 109. [y] Ib. 103.
[z] Ib. 110. [a] Vol. iv. p. 33, part ii. c. 44.

Polemarch, as the last to vote, had to give the casting-vote; that is why Miltiades turns to him with a special appeal. In the battle, the Polemarch has the leading of the left wing, but yet is always under the command of one of the Strategi. Now are these two things, the vote iu the council of war, and the leading of the right wing, really of such importance, that it ought to be incredible that they were entrusted to an officer taken by lot, and not, like the Strategi, by a show of hands? In my judgment, it could only seem so, if, on the one hand, the functions of the Polemarch were such as to require tactical and military knowledge, which could only be expected in persons specially trained to it; and if, on the other hand, the lot admitted to the office of Polemarch even persons who could not be credited with the necessary aptitudes. But I conceive that in this case neither condition applies.

The Archons, of whom the Polemarch was one, were taken by lot, *not* from the whole mass of the people, not even from all three higher property-classes, but exclusively from the Pentakosiomedimni; that is, from among the wealthiest and most cultivated persons. Military exercises formed part of the public training; tactics were simple, and strategy was in its infancy. Hence the Athenians might expect without any absurdity, that the capacity required for the functions stated above as the Polemarch's would hardly be absent in any of the class, who were entitled to offer themselves at the sortition. Indeed, such a presumption was not less, but in fact rather more justifiable than that in virtue of which, at a later time, every citizen of good character was admitted to sortition, not merely for the office of Archon, but for many others; although some of these offices were such, that their ordinary duties could not be discharged without some knowledge of law and of business. But there was simply the confidence, that any ordinary citizen who offered himself for sortition, would possess the requisite capacity; and that confidence was obviously somewhat more justifiable in the older times of which we are now treating, than it was later.

So much for Mr. Grote's first argument. Now let us consider what he says next [b].

"Herodotus seems to have conceived the choice of magistrates by lot, as being of the essence of a democracy, (Hdt., iii. 80)." Certainly it seems to be so; for in the place referred to, Herodotus makes Otanes say, on the occasion of the deliberation of the Persians as to the measures to be adopted after the murder of the pretended Smerdis, that wherever there is popular rule, the offices of government are filled up by lot. No doubt we are to fill up Mr. Grote's reasoning in this way; Herodotus knew that there was a democracy at Athens at the time of the first Persian war; he regarded sortition of magistrates as belonging to the essence of democracy; consequently, he imagined that officials were taken by lot even at Athens, as early as in the time of the first Persian war. In other words; Herodotus had no knowledge of the sortition of magistrates at Athens at the time in question, but only assumed it *ex conjectura*. And yet Herodotus surely knew, that even in a democracy all offices were not filled up by lot, though some, indeed the majority, were; and Mr. Grote will no doubt admit that in a context like that of iii. 80, precision of terms would not be important to him, and that he might make Otanes say what he does, even if it were not correct without exception. Besides, it was not unknown to Herodotus, that even at Athens in the time of the first Persian war, some offices were filled up by election, and not all by lot; and he expressly says of Miltiades, *στρατηγὸς ἀπεδέχθη αἱρεθεὶς ὑπὸ τοῦ δήμου* [c]. Was he likely to contrast the Polemarch as taken by lot with the general as elected, merely in order to offer a conjecture, the idleness of which was to be discovered by the acumen of a critic more than two thousand years after? Let us hear how Mr. Grote goes on.

"Plutarch also (Perikles, c. 9) seems to have conceived the choice of Archons by lot as a very ancient institution of Athens; nevertheless, it results from the first chapter of his life of Aristeides, an obscure chapter, in which

[b] Vol. iii. p. 126, note, c. 31. [c] vi. 104.

conflicting authorities are mentioned without being well discriminated[d], that Aristeides was *chosen* Archon by the people, not drawn by lot; an additional reason for believing this is, that he was Archon in the year following the battle of Marathon, at which he had been one of the ten generals. Idomeneus distinctly affirmed this to be the fact,—*οὐ κυαμευτὸν ἀλλ' ἑλομένων Ἀθηναίων*, (Plutarch, Arist. c. 1)." Thus Mr. Grote admits that Plutarch alleges contradictory authorities, without deciding clearly for one or the other[e], and yet considers the result of these allegations to be, that Aristeides received the office of Archon not by lot, but by election. This being so, he must have discovered a criterion which enabled him to decide what Plutarch, according to Mr. Grote's own confession, left undecided. Let us therefore examine the references and authorities in question a little more closely.

On the one side we find Demetrius of Phaleron, a man of whom we know that he had accurately studied the history and antiquities of the state, at the head of which he was for ten years, and that he wrote several works of repute on the subject. Now he expressly says, that Aristeides became Archon by lot, at a time when only Pentakosiomedimni could attain to the office; and he alleges this very fact as a proof that Aristeides could not have been so poor as many thought.

On the other side there is Idomeneus, a writer not only considerably later than Demetrius, but also one of a school which has not the reputation of having spent much pains on searching and precise enquiries. That is to say, he was an Epicurean; there are mentioned as his writings a book about the Socratics, one about Samothrace (only in Suidas), and one about Trojan history. What he said of Aristeides

[d] Vide note below.

[e] ["Ohne recht zwischen ihnen zu entscheiden," in allusion to the phrase by which Schömann has above translated Grote's words, "without being well discriminated." Schömann's translation seems incorrect; Grote must have meant that Plutarch did not clearly distinguish what was one author's view, from what was another's; if so, Schömann's argument from Grote's admission is destroyed; but his examination of the passage in Plutarch holds good.]

could in any case only occur in a passing observation. According to Sintenis' careful judgment[f], the specimens of his writing which occur in Plutarch and Athenæus are such "ut gravem quidem ac fide dignum scriptorem minime deceant." And Luzac's judgment on him is equally unfavourable[g]. Therefore, setting authority against authority, there can be no doubt which of the two deserves most credit. So if in this case the worse authority is to be preferred to the better, it must be strengthened by overwhelming arguments. What arguments has Mr. Grote? Besides his preconceived idea that the introduction of the lot could not possibly be so old, only this one; that Aristeides filled the office of Archon in the year after the battle of Marathon, in which he himself was one of the ten generals. He seems to think that this can only be explained, by supposing that the office was bestowed on him in consequence of his merit as displayed in the battle, and consequently not by the chance of the lot, but by popular election. And this is pretty much the conclusion which Plutarch seems to have reached; only his words indicate at the same time that he conceived of this election as an exception to the rule of sortition, made in favour of Aristeides. He says, *πάνυ πιθανόν ἐστιν ἐπὶ δόξῃ τοσαύτῃ καὶ κατορθώμασι τηλικούτοις ἀξιωθῆναι δι' ἀρετήν, ἧς διὰ πλοῦτον ἐτύγχανον οἱ λαγχάνοντες*. So firmly was he convinced that the lot was the rule even at that time.

In the life of Perikles, he says it was introduced *ἐκ παλαιοῦ*, that is, long before Perikles, which quite suits the time of Kleisthenes, but not the times after the battle of Platæa, to which Mr. Grote is inclined to transfer its introduction. For the interval between the battle of Platæa and Perikles' first appearance as a statesman was little more than ten years. Again, is it true that the circumstance of Aristeides' Archonship in the year after the battle of Marathon, is only capable of being explained by its having been bestowed upon him as a reward for his services in that battle? *Post hoc, ergo propter hoc,* is usually adduced as a specimen of fallacious inference.

[f] Plut. Perikles, p. 320.

[g] Lect. Att., p. 114.

Lastly, Mr. Grote[h] refers us to Isokrates[i], according to whom, he says, the constitution of Kleisthenes contained the following points: "1. a high pecuniary qualification of eligibility for individual offices; 2. Election to these offices by all the citizens, and accountability to the same after office; 3. No employment of the lot." Now it is true that Isokrates says in that place that the constitution of Athens in more ancient times contained these points; and he has above[k] indicated Solon as the founder, and Kleisthenes as the restorer, of that constitution; but to attempt to infer from this that in each particular point he was alluding equally to both legislators, would be rather imprudent. And, granting that he was doing so, it is well enough known how we are to estimate the accuracy of the orators in historical assertions of this kind. Mr. Grote, at least, knows it quite well, and of Isokrates in particular he says in an Appendix[l] to the second volume of his work, that he must be employed with caution; and he says of the Areopagiticus[m] in particular, that the picture which it gives of the earlier constitution is inaccurate, and to a great degree ideal. So I may surely say with justice against him, what he has elsewhere said with injustice against me, "this admission seems to me fatal to the cogency of his proof."

Not to omit any argument which Mr. Grote relies upon, we must here look for a moment at what he brings forward in his text[n], shortly before the argument which we have so far been examining, which is added in a note. He is speaking of the law of Aristeides, by which, shortly after the battle of Platæa, the previous exclusion of the fourth class was removed, and eligibility to offices was granted to all citizens, without distinction of property. Plutarch's notice of this point runs thus[o]: *γράφει ψήφισμα, κοινὴν εἶναι τὴν πολιτείαν καὶ τοὺς ἄρχοντας ἐξ Ἀθηναίων πάντων αἱρεῖσθαι.* Mr. Grote observes, "No mention is made of the lot in this important statement of Plutarch, which appears to me every way worthy of credit, and which teaches us, that down to

[h] iii. 126 n. [i] Isokr., Areopag., p. 144 (Sectt., 21—23). [k] Sec. 16. [l] The Appendix alluded to does not appear in the second edition. [m] Vol. iv. p. 106, part ii. c. 46. [n] iii. 125, c. 31. [o] Aristeides, c. 22.

the invasion of Xerxes, not only had the exclusive principle of the Solonian law of qualification continued in force (whereby the first three classes on the census were alone admitted to all individual offices, and the fourth, or Thetic class, excluded), but also the Archons had hitherto been elected by the citizens, not taken by lot." The first of these facts—restriction of eligibility to the three higher classes—the place certainly does teach us; but it only teaches us the second (choice by majority of votes, and not by the lot), if the word *αἱρεῖσθαι* is taken as a proof of it. Ought Plutarch to have said *κληροῦσθαι*? Could he use that word, seeing that it was always the case that only some, not all, of the magistrates were taken by lot? Or was it necessary for him to express both modes of choice distinctly side by side, as by writing *ἢ κλήρῳ ἢ χειροτονίᾳ αἱρεῖσθαι*? I conceive that Plutarch did right in adopting the general expression; but Mr. Grote seems to deny to Plutarch below, in the note discussed just now, what he here ascribes to him. Here he represents him as distinctly saying that election, and not lot, was in use down to the time after Platæa; while there he is described as not being able to decide between different authorities [p].

Hence it seems sufficiently established that all Mr. Grote's attempts to support his view by evidence, and to invalidate assertions to the contrary, are completely unsuccessful; and he himself would undoubtedly have recognised the weakness of his reasoning, if his judgment had not been perverted by the preconceived opinion, that sortition for magistracies was impossible at the time of Kleisthenes. The lot appeared to him to be an institution which, of necessity, could only be introduced at a period of intensified democracy, such as we see, at the earliest, some years after the battle of Platæa; he ascribes it to Perikles, not to Kleisthenes. "We have," he says [q], "no positive information that it was Perikles who introduced the lot, in place of election, for the choice of Archons and various other magistrates. But the change must have been introduced nearly at this time;" and this "must" is to supply the lack of positive information. The

[p] But see note e, p. 77, sup.

[q] iv. 101, part ii. c. 46.

question has, however, another and a very different side, and if we consider that other side, the introduction of the lot by Kleisthenes will no longer seem so incredible. We know from Aristotle[r] that the lot had been introduced, among other purposes, with the object of putting a stop to electioneering intrigues; this was the case, for instance, at Heræa, because the elections had before always resulted in favour of the wire-pullers. Now we also know that after the fall of the Peisistratid tyranny, Athens was distracted by the most violent party struggles; and that the party headed by Isagoras carried on a conflict, with all the means in its power, against that of which Kleisthenes was the leader. Obviously, when this was going on, there must have been plenty of all sorts of electioneering factions. Isagoras himself appears as Archon for 507, clearly because his faction secured the office for him. Such intrigues Kleisthenes thought it his duty to provide against. Therefore he abolished popular elections, and introduced selection by lot for a great part of the offices; believing that this would secure appointments in most cases no worse, and in many much better, than those made by the votes of a populace misled by faction and intrigue. I should have thought that even in England there had been enough opportunity to judge of the value of this kind of popular election. At least, here in Germany we have had experience which would justify us in concluding, that it was impossible to make worse appointments by the chance of the lot than by the votes of the masses, guided by demagogues and party-leaders. Moreover, it must be borne in mind that, according to the Kleisthenean constitution, even if it introduced the lot, still the number of those among whom the choice was made continued to be restricted to citizens of the three higher classes; and in the case of the highest offices, to the Pentakosiomedimni. Besides, new citizens were excluded at least from all offices for which citizenship ἐκ τριγονίας was requisite. Landed property, too, may have been a condition for many magistracies. Lastly, the poorer citizens no doubt were glad to exclude themselves,

[r] Pol., v. 3. 9.

because the offices were unpaid; but they enjoyed the certainty that if they did stand, they could not be thrown into the background, and set aside by richer or more aristocratic candidates.

(*g.*) *Areopagus in the time of Kleisthenes.*

About the Areopagus, its position and importance in the time of Kleisthenes, in comparison with what it was meant to be under Solon's constitution, Mr. Grote[s] has some excellent observations, to which I venture to make a few additions. According to Solon's intention, the Areopagus was to be the superintendent of the whole state, and the guardian of the laws, as Plutarch[t] expresses it. The expression is extremely general, and tells us nothing in detail of the functions assigned to the Areopagus, and therefore we cannot take it ill of Mr. Grote that he uses equally general language[u]. All that we read in the Areopagiticus of Isokrates, about it and its activity in earlier times, relates only to its superintendence of the public discipline, not merely that of the youths, but also that of grown-up persons. It does not in any way touch upon its relations with the organs of public power, the magistrates and the assembly. We might be tempted to ascribe to it an important part, especially in the Dokimasy and the Euthyne of magistrates, and to regard the later procedure, in which it has no share at all, as one of the innovations which were bound up with the limitations on the Areopagus effected by Ephialtes; a conjecture which loses nothing, at least of its probability, from not being supported by express evidence. For its relation to the popular assembly, however, there is a notice about the Nomophylakes preserved from Philochorus[x], which affords a fixed point, to which further inference may be attached with some certainty. Philochorus connects the establishment of the Nomophylakes with the lowering of the position of the Areopagus; they were instituted, he says, when Ephialtes left to it

[s] iii. 128, c. 31. [t] Solon, c. 19. [u] ii. 323, c. 11. [x] In the fragment of the rhetorical Lexicon that follows Photius, p. 674. Engl. edition.

uncurtailed nothing but the criminal jurisdiction in capital cases, which it had before. From this statement we must infer, that the functions which were now transferred to the Nomophylakes had previously belonged to the Areopagus. And among those functions is this in particular, that they had their seat beside the Proedri, both in the council and in the popular assembly, and could make a protest if anything injurious to the state was being done; *κωλύοντες τὰ ἀσύμφορα τῇ πόλει πράττειν.* This can have no other meaning, than that they had the right to interpose their veto, and by doing so, either to prevent a proposal in the council or the assembly, which they thought mischievous, from being put to the vote, or to hinder its execution if it was actually carried. At least, the former power may be assumed with certainty. Now, if Solon gave the senate and the popular assembly the right of making decrees with reference to public affairs, it cannot be doubted that he would also give the Areopagus the power of superintending the exercise of this right.

Plutarch says that Solon intended by means of the two councils, the Areopagus and the Four Hundred, to provide the state as it were with two anchors, to prevent the ship of the commonwealth from being driven about by the waves. He probably found the metaphor in Solon's writings; the waves are the passions of the populace, the two anchors answer to the regulative and restrictive powers of the two senates. Now Mr. Grote[y] observes with undoubted truth, that in the time of Kleisthenes the Areopagus must necessarily have consisted in great part of members who were hostile and odious to Kleisthenes and his party. The reason he gives is, that by Solon's enactment the Areopagus was composed of past Archons, and under the tyranny no one was elected Archon who was not a creature of the Peisistratids. On this account, "its influence must have been sensibly lessened by the change of party[z], until it came

[y] iii. 128.

[z] Schömann, "Die nunmehr eingetretene Staatsveränderung," which perhaps represents what Grote must have meant, i.e. the predominance of a new and opposed party in the government.

to be gradually filled by fresh Archons, springing from the bosom of the Kleisthenean constitution."

He certainly does not mean that Kleisthenes passed definite laws in restriction of the power which Solon had assigned to the Areopagus. He only means, that though the legal rights of the Areopagus remained as before, yet it did not dare under the altered conditions to make use of them on the side of the party to which it really belonged, and so was inactive and acquiesced in much that was repugnant to it, because it could not change what was being done. There is no objection to this; but Mr. Grote goes on: "Now during this important interval, the new-modelled Senate of five hundred and the popular assembly, stepped into that ascendancy which they never afterwards lost. From the time of Kleisthenes forward, the Areopagites cease to be the chief and prominent power in the state." This sounds as if we really had knowledge of a time at which it could claim such a predicate. As far as I am aware, we have no such knowledge. Aristotle says[a] the Areopagus gained a high reputation at the time of the Persian war, and so came to impart to the state a stricter (*συντονωτέραν*, i.e. no doubt a more strictly law-abiding) character; and all that we know of it from other sources is limited to its superintending, restrictive and censorial powers. Legislative power, on the contrary, never belonged to it; and even as regards the former kind, we have no information as to the means it had at command, in order, for instance, to enforce its veto in the popular assembly. We are safe in assuming that its power in this respect could only be effective, if opinion was divided in the assembly itself; and that it was powerless against the unanimous will of that body, and would have been just as much so, if Solon's laws had continued in unbroken force, and if there had been no interval of Peisistratid monarchy, and of filling-up the Areopagus with the creatures of the tyrants.

[a] Pol., v. 4. 8.

(*h.*) *Ostracism abused by the Athenians.*

We have still to say a few words on the ostracism, which Mr. Grote[b], in agreement with the view now pretty generally acknowledged to be correct, represents as among the reforms of Kleisthenes. In treating it, he explains profoundly and luminously the peculiar significance of the institution, and gives a detailed exposition of the conditions present in free states like those of Greek antiquity, whose existence was essentially dependent on the voluntary obedience of the citizens to the laws and the government. In such states, it might prove easy for influential men to raise a party, by whose help they might set themselves above the laws. No more lenient and rational means could be discovered of averting any such danger, and avoiding the distracting party-conflicts otherwise inevitable, than that of removing betimes from the state, while it could still be done without an armed resistance, for a certain interval, those from whom such a danger might be apprehended. By this they themselves lost nothing but the chance of becoming more powerful than they ought, while the state was freed from the fear they inspired. This was unquestionably the idea which Kleisthenes, and the lawgivers of other states in which there were similar institutions, had in their minds in devising them; and it has not been misapprehended by careful and acute enquirers. Mr. Grote[c] remarks with disapproval, that many writers have founded upon the ostracism accusations against the Athenians of envy, injustice, and ill-treatment of their superior men. But the accusation has not been so much directed against the ostracism itself in its original conception, as against the application which the Athenians made of it. Those who made it, imagined that the evidence of the ancients, and the instances[d] in point, shewed that the people were often moved to inflict ostracism, not by real danger or reasonable fear, but rather by envy and repugnance. And in fact it

[b] iii. 128. [c] iii. 137. [d] [Grote enumerates the cases, and comments on some of them, iii. 137, 8.]

would hardly be possible to oppose this view, however much inclined we may be to view the actions of the Athenian Demes in every case in the best light.

(*i.*) *Form of procedure in Ostracism.*

The form of procedure in ostracism is quite correctly described by Mr. Grote. In particular, he is right in assuming[e] that the condition requisite for a valid decree of banishment is to be understood as the unanimity of 6,000 votes; not merely a majority, whether relative or absolute, out of 6,000 votes. The latter, indeed, is what Plutarch states; but the other view, which Philochorus affirmed, is supported by the analogy of the procedure in the case of other votes of a similar kind; and by the circumstance, that when the assembly had carried a decree that a vote of ostracism should be taken, it was not proceeded with at once, but a later day was fixed, on which the people was to assemble for the purpose. So, if the assembly on that day was not numerous enough for a majority of 6,000 votes to result, that was a proof that the matter did not seem important enough to the people, and the voting led to nothing. If the matter was really thought serious by the people, of course they would come in great numbers, and a majority of 6,000 votes was, in that case, not too much to require. A similar procedure took place with all decrees that belonged to the category of *privilegia*. In these cases, too, there were separate assemblies: first, one in which the proposal was only announced, and either admitted or disallowed; then a second one, in which it was decided whether what was proposed should be granted or refused. This is particularly plain in the speech against Neæra, p. 1375[f].

[e] iii. 133.

[f] As regards the ostracism, Böckh, who before decided for Plutarch, now (in the second edition of the Staatshaushaltung, i. p. 325) declares for Philochorus. I myself, too, withdraw the doubts which I expressed before (de Comitt. Ath., p. 245, 6) more distinctly than I ventured to in the Antiq. jur. publ. Græc., p. 233.

(*k.*) *Kleisthenes' Reforms not before* 507 B.C.

Before leaving the subject of Kleisthenes, there is one minor matter to speak of. The year in which the introduction of his constitution is to be placed cannot be fixed with certainty; Mr. Grote, if we may infer from a passing remark[g], seems to assume 509. But that is a little too early. As the head of the opposite party appears[h] as Archon in Olymp. 68. 1 (B.C. 508-7), it must be supposed that by that time the party of Kleisthenes had not obtained the predominance which it afterwards obtained, according to Herodotus[i], chiefly in consequence of the Kleisthenean tribal changes, and which reduced Isagoras to apply for help to King Kleomenes and the Spartans. They compelled Kleisthenes to leave the city; and it might be assumed that this was the time at which Isagoras, whose party was again decidedly predominant, was elected Archon. But when we read in Herodotus[k], how the Senate of that date offered a successful resistance to Isagoras' attempt to dissolve it; and how Isagoras himself, with his champion Kleomenes, was compelled to retire to the Akropolis, and after a short siege, to capitulate and leave the country, we shall not think his election as Archon under those circumstances very probable. So, if the Archonship of Isagoras preceded the reforms of Kleisthenes, they cannot have taken place before 507. Besides, they were certainly not all introduced at once, but gradually; many of them not till after Kleisthenes' return from the brief absence to which Kleomenes had forced him.

§ 7. Changes between Kleisthenes and Perikles.

We hear of no constitutional changes in the interval between Kleisthenes and Perikles, excepting that proposed by Aristeides soon after Platæa, which made the offices of state, with some few exceptions, thenceforth accessible to all citizens not specially disfranchised, without distinction

[g] iii. 128.
[h] Böckh, C. I. ii. 318.
[i] v. 69.
[k] Ib., c. 72.

of property-classes. The causes which made this extension of the people's rights advisable or necessary at that time are not hard to see, and are well expounded by Mr. Grote[1]. Of course, he repeats at this point that the offices were then filled up by election and not by lot, and that the lot was introduced some time later; but I think I have sufficiently shewn above, that there is no cogency in the arguments he has brought forward against the introduction of the lot as early as by Kleisthenes' constitution. But I readily assent to the other conjecture, that many offices, such as those of Astynomi, Agoranomi, Metronomi, Sitophylakes, if not first instituted, were at least extended, that is, divided among several persons at this time; that is, after Themistokles had made Athens essentially a maritime state, and a second town was founded in Peiræus, in which part of these magistrates had to act.

§ 8. Changes under Perikles.

(*a.*) *List of Changes mentioned by the Ancients, and of those vouched for by Grote.*

We hear much more, not indeed from the ancients, but from Mr. Grote, of the very important constitutional changes introduced during the time of Perikles. All that the ancients tell us of this, is limited to the diminution of the functions of the Areopagus, and the transference of part of them to the newly-instituted authority, the Nomophylakes, and to the introduction of pay for the assembly and the Dikasteries, with which we may connect the largesses in money called Theorika. This and the judicial pay are the only things, the introduction of which is expressly ascribed to Perikles himself; that of pay for the assembly at least falls in his time, and may have been brought about by him, though his name is not mentioned in connection with it; the curtailing of the Areopagus was effected on the proposal of Ephialtes, but acting in concert with Perikles. This, then, is what the ancients tell us.

Mr. Grote, on the other hand, thinks it certain that it

[1] iv. 32, c. 44.

was Perikles who first limited the magistrates' authority, by separating from their administrative functions the judicial ones which were previously bound up with them, and leaving them only the right of inflicting a small fine[m]. That is, therefore, he was the first to make the magistrates mere agents of "instruction," instead of judges, and to introduce the distinction between Jus and Judicium. At this time, too, Mr. Grote tells us, public arbitrators were first appointed[n], who had to decide as judges of first instance in private suits; and at this time the procedure, in bringing in new and repealing old laws, was regulated by the ordinance of Nomothetæ, which withdrew the decision upon laws from the public assembly, and transferred it to a smaller body of sworn citizens[o]. Again, it was at this time that the γραφὴ παρανόμων was introduced; in other words, the right given to every citizen to attack as illegal, and prosecute in judicial form, a proposed law or psephism, the result being that the law or psephism impeached was suspended till the decision of the court, and if the verdict was unfavourable, was annulled[p]. All this, Mr. Grote vouches for.

(*b.*) Not *improbable that these latter Institutions were older than Perikles.*

Perikles and his administration are often enough discussed by the ancients, and besides a number of passages in which, as occasion offers, more or less detailed mention is made of them, we have a biography of Perikles at full length by Plutarch. But neither in the occasional references, nor in Plutarch, is a single syllable said of any of these important enactments, which Mr. Grote feels justified in ascribing to him with such confidence. It seems to me that this necessarily leads to the conclusion, that the ancients knew nothing of them. The great importance of the ordinances forbids us to suppose that they could have been passed over in silence, whether on purpose, or by

[m] Vol. iv. 111 and 123, c. 46.
[n] iv. 102, [Grote does not say they were *first* appointed under Perikles].
[o] iv. 116.
[p] iv. 118.

chance, if the ancients had known of them; and it could not be thought more probable that a malicious chance should have deprived us of just those passages in which they were mentioned. Mr. Grote himself, as we saw above in treating of the Kleisthenean Demes, admits the principle that important changes ought not to be believed in without positive evidence; here there is no positive evidence; what is to supply its place? The internal evidence, from the nature of the case, and the impossibility of the opposite opinion.

Mr. Grote[q] says that the opinion which represents "the popular Dikasteries, and the Nomothetæ, as institutions of Solon, and as merely supplied with pay by Perikles, prevents all clear view of the growth of the Athenian democracy, by throwing back its last elaborations to the period of its early and imperfect start." Of course, if the notion really was that those institutions were not merely founded by Solon's legislation, but had the same extent of activity from the very beginning as we find them with in the Periklean age, Mr. Grote might well dispute it. But who ever entertained such a notion? The Heliæa was a select committee of jurors, for the purpose of sitting as a court of highest instance in public and private cases, and assembled for this purpose sometimes in larger, and sometimes in smaller sections. Does Mr. Grote really think that such a body could not possibly exist, without forthwith assuming the position which it afterwards came to hold in consequence of altered conditions? I have already discussed the subject in sufficient detail, and mentioned the courts which existed over and above the Heliæa; viz., the Areopagus with more extensive powers, the judges of first instance, the cantonal judges, and the Diætetæ, so that I need only refer to what has been said. For as for Mr. Grote's transference of the establishment of Diætetæ to the age of Perikles, it is simply an arbitrary assertion[r], which we could only be induced to controvert by arguments, if he had himself supported it by any. As regards the Nomothetæ, Mr. Grote himself admits[s] that this in-

[q] iv. 123. [r] [Does Grote make it? see n. n. p. 89, sup.] [s] iv. 116.

stitution was an important limitation on the legislative power of the general assembly of the people. "The Ecclesia . . . . . became incompetent either to pass a new law, or to repeal a law already in existence." He further describes it as a wise provision, that legislation was not left to the excitable populace, not bound by an oath, but was reserved for a committee of sworn citizens, which was sufficiently numerous to be a complete representation of the whole, but because of the age of its members, their oath, and the prescribed judicial procedure, was better suited for careful, comprehensive, and conscientious deliberation. But according to this, he should not have ascribed the institution to the last elaboration and development of the democracy, which it was rather intended to counteract. In the stage of fully-developed democracy, as we see it in the times of Demosthenes, we find the ordinance of the Nomothetæ for this very reason, not indeed abolished, but continually circumvented and violated, as a restriction on popular power. And then there found its way in the form of legislation, which Mr. Grote must ascribe to the pre-Periklean, i.e. less-developed democracy; unless he prefers either to say that before Perikles there were no new laws passed, and no old ones repealed, or to point out some other form in which it could have been done.

The *γραφὴ παρανόμων* is denied to the pre-Periklean age, with as little justice as the Nomothetæ. It is a second measure of precaution against democratic temerity. If the official authorities for the purpose had neglected, or had failed to hinder an illegal and mischievous decree, there was still this procedure, which opened a method to well-affected citizens, of subjecting it to the judgment of a smaller and more prudent assembly of sworn members, and possibly of annulling it.

On the organization of the Heliæa, Mr. Grote says[t], "I do not here mean to affirm that there never was any trial by the people before the time of Perikles and Ephialtes. I doubt not that before their time the numerous judicial assembly called Heliæa, pronounced upon charges

[t] iv. 103.

against accountable magistrates, as well as upon various other accusations of public importance; and perhaps, in some cases, separate bodies of them may have been drawn by lot for particular trials. But it is not the less true, that the systematic distribution and constant employment of the numerous Dikasts of Athens, cannot have begun before the age of these two statesmen, since it was only then that the practice of paying them began. For so large a sacrifice of time on the part of poor men .... cannot be conceived without an assured remuneration." The formation of sections out of the Heliastic body, which is in this passage admitted as an exception, and for particular cases, ought properly to be regarded as the rule. Even before there were six thousand Heliasts, there could hardly be a reason for convoking the whole body in all ordinary cases; and if so, a fixed division into sections, or Dikasteries as the Athenians called them, was far more probable, than that on each occasion the number required should be taken by lot for that turn. But as in course of time the demand for the performance of Heliastic functions went on increasing, it was necessary also to increase their number to a corresponding extent. It is not quite clear whether the Heliasts were only taken from among those who offered themselves, or from among all citizens who possessed the legal qualifications, i.e. were over thirty, and were not disfranchised. If the former was the case, then as long as there was no pay, only the wealthier citizens would offer themselves, and to attract the poorer as well, it was necessary to offer indemnification, for the sacrifice in time lost from their business; if the latter was the case, it was the more right and reasonable to give them compensation for a service from which they might not withdraw, especially from the time when this service came to be so frequently demanded.

Of course, we are not to conceive the sittings of the Heliastic courts as being so frequent, and consisting of so many members, as might appear from Aristophanes' estimate of the judicial pay[u]. Omitting the festivals, and

[u] Wasps, 660 ff.

other days on which no courts could be held, there would hardly be sittings of every court on every court-day. In many cases whole sections of five hundred members did not sit, but only fractions of sections. A "Phasis," for instance, was tried according to Pollux before 400 judges, if it concerned an amount of more than 1,000 drachmæ, but before 200, if the amount was less; and thus we must assume that in all cases the number of judges varied with the importance of the case. In more important matters, indeed, we even find several sections united. Now a great increase of law-business dates particularly from the time at which the Athenians brought the litigation of the subject allies before their own city courts; a measure which, like the introduction of judicial pay, belongs to the Periklean age; and if any one ascribes also to that age the number of 6,000 altogether, 500 in each section, and 1,000 substitutes, there is no objection to be made. So much we may grant to Mr. Grote. But to go further, and ascribe the whole organization of the Heliæa to no earlier time than this, and even to assume, as Mr. Grote does, an entire revolution of the judicial system in it, is not made necessary or justifiable by anything we know of.

(*c.*) *Judicial pay at first one Obol.*

The amount of the judicial pay was certainly three obols at the time of the Peloponnesian war and later; at an earlier time it seems to have been only one obol, as Böckh has made extremely probable, even if he has not proved it to demonstration. Mr. Grote[x] makes some objections to his proof, but merely on the ground that he thought one obolus too small a compensation for the time which the judge spent on his duty: and it is true that an obol was not as much as one of the common people could earn in a day. So, if a man of this class was compelled to become a Heliast even against his will, then his pay was not an adequate compensation. But it is anything but clear whether there was any such compulsion, as I pointed out

[x] iv. 121, c. 46.

above; and in the Wasps of Aristophanes the Heliast's function appears all through as voluntary and self-sought. An obolus might be sufficient to make those people inclined to perform the function, to whom the small receipt was not an unwelcome assistance, i.e. not the very poor, but the less rich. Later, when three obols came to be paid, it was especially the poor who came forward for the sortition.

(*d.*) *Δικαὶ ἀπὸ συμβόλων included all Law-suits carried on by Allies at Athens.*

As I alluded above to the litigation of the allies which was brought before the Athenian courts, and as Mr. Grote[y] too treats of it at length, a brief observation upon it may be inserted here. Mr. Grote supposes, with great probability, that at the first foundation of the Athenian symmachy, a court of justice was established besides[z] the Synedrion of Delos, partly to decide the disputes of the confederate states with each other, partly those between the members of different states. The latter purpose presupposes covenants about the principles and the form of procedure which were to be followed in litigation arising between members of different states, and covenants of this kind were, as is well-known, called *σύμβολα*. We may therefore say that the confederates had not merely a *συμμαχία*, but also *σύμβολα* with each other; and not merely a *συνέδριον*, but also a *κοινοδίκιον* at Delos. So later, when the Synedrion was transferred to Athens, together with the confederate treasury, the *κοινοδίκιον* at Delos came to an end, and the Athenian courts took its place. Soon things went further, and even litigation between citizens of one and the same state, supposing it concerned more than a certain sum, was brought to the decision of the Athenian courts. No doubt it may be assumed that, in law-suits between members of different states, the rules based on covenants, such as the *κοινοδίκιον* of Delos had followed, served, or were meant to serve, as the guide of the Athenian

[y] iv. 175 ff. c. 47.

[z] [Rather, that the Synedrion acted as a court of justice.]

courts; such suits, therefore, might continue to be called *δίκαι ἀπὸ συμβόλων*. But it is not incredible that this same name now came to include those law-suits which the members of one and the same state carried on with one another before the Athenian courts; although in truth it did not apply to them, and the *σύμβολα* had no relation whatever to such cases.

So I still hold, as before[a], that the statement of the grammarians, who attribute this name quite generally to all suits which the confederates carried on at Athens, is not to be rejected. I see no reason for assuming with Mr. Grote that it does not refer to the earlier symmachy, but to the later one, which was gradually formed after the battle of Knidus. At least this much is not incredible, that law-suits between members of different states were called by this name, whether both parties were citizens of confederate towns, or only one of them belonged to such a town, and the other to Athens. This view seems to me not to be contradicted by the passage of Antiphon[b]. The speaker says; "Many of the subject-allies emigrate, and live even among the enemies of Athens (as Metoeki), and cheat the Athenians by means of *δίκαι ἀπὸ συμβόλων*." But this is no proof that if they had stayed at home, and entered upon law-suits with Athenians there, these would not also have belonged to the category of *δίκαι ἀπὸ συμβόλων*. It only shews that such persons were more in the habit of initiating suits against Athenians in foreign parts, having a better chance against them there. But Böckh[c] asks, what advantage could accrue to the plaintiff from leaving his country, if the suit initiated in his place of residence could not possibly result in any other mode of decision than would have been open to him at home? The answer is, that I am not referring to a suit brought from the new place of residence before an Athenian court, but of a suit which the plaintiff might bring against an Athenian before a foreign court, in consequence of *σύμβολα* existing between Athens and independent foreign states. That there were *σύμβολα* in virtue of which the plaintiff

[a] Att. Proc. 779. [b] De Cæde Herodis, 745. [c] Staatsh. i. 530.

was not compelled to have recourse to the defendant's place of residence, but might prosecute him where he found him, I think that I am justified in assuming with Hudtwalcker [d]. And it is clear that the plaintiff against an Athenian, was in a better position before a foreign court of justice, than before one at Athens.

§ 9. The Revision of the Laws under Eukleides not caused by the Amnesty.

The changes in the constitution during the latter years of the Peloponnesian war, were first the establishment of Probouli immediately after the disaster in Sicily, then the oligarchy of the four hundred, and finally, after the capture of Athens by Lysander, the sovereignty of the so-called thirty tyrants. All of these were of short duration, and without permanent consequences, and so may be passed over here; the rather, that the doubts which I might express concerning Mr. Grote's account only touch some accessory points of small importance. So also the remarks I have to make about the restoration of the democracy after the fall of the thirty, and the revision of the laws, which was then set on foot, are of no great consequence; still they may be inserted here. Mr. Grote thinks that after it had been determined to restore the Drakonian and Solonian laws [e], it was found, on closer inspection, that this was incompatible with the amnesty which had been just sworn. According to those laws, the perpetrators of enormities under the thirty had rendered themselves guilty, and were open to trial. Yet the amnesty had secured impunity to all of them, with some individual exceptions. To escape this consequence (i.e. to avoid the resulting contradiction between the restoration of the old laws and the amnesty), it was enacted, on the proposition of Tisamenus, to review the laws of Solon and Drako, and re-enact them, with such additions and amendments as might be deemed expedient. And this is the way in which the orator Andokides [f] also represents the case; but it cannot possibly be the right

[d] V. d. Diät. 125. [e] vi. 5, c. 66. [f] De Myster., 82.

account. Supposing it had really been feared that the decree previously framed, enacting that the ancient laws should be restored for a time, would endanger the amnesty, the most natural and simple remedy was to affix a clause to the decree, protecting the amnesty. The psephism of Tisamenus says not a syllable of the amnestied offenders, neither has its meaning and purpose anything to do with them. It decrees a general revision of the laws, and that the necessary additions should be made[g]. Such a revision was necessary, even if no amnesty had preceded it. It was not ordained for the first time by the psephism of Tisamenus; it had been decreed before, and the Nomothetæ were already elected for the purpose. Obviously this decree was the same as that which gave temporary authority to the ancient laws, and appointed a no less temporary government of twenty persons. This is quite clear from the words of Andokides: *εἵλεσθε ἄνδρας εἴκοσι· τούτους δὲ ἐπιμελεῖσθαι τῆς πόλεως, ἕως ἂν οἱ νόμοι τέθειεν· τέως δὲ χρῆσθαι τοῖς Σόλωνος νόμοις καὶ τοῖς Δράκοντος θεσμοῖς·* for *ἕως ἂν οἱ νόμοι τέθειεν* obviously means, "until the new legislation, which is to be framed on the basis of the old revised and amended, is completed." The psephism of Tisamenus only contains the particular rules of the procedure to be observed in this revision, and in these additions. Besides, a general revision of the laws, in order

[g] To save my readers the trouble of reference, I add the psephism itself, from Andok. de Mysteriis, 83, *Ἔδοξε τῷ δήμῳ· Τισάμενος εἶπε· πολιτεύεσθαι Ἀθηναίους κατὰ τὰ πάτρια, νόμοις δὲ χρῆσθαι τοῖς Σόλωνος καὶ μέτροις καὶ σταθμοῖς, χρῆσθαι δὲ καὶ τοῖς Δράκοντος θεσμοῖς, οἵσπερ ἐχρώμεθα ἐν τῷ πρόσθεν χρόνῳ. ὁπόσων δ' ἂν προσδέῃ, οἱ δὲ* (probably *οἱ ἤδη*) *ᾑρημένοι νομοθέται ὑπὸ τῆς βουλῆς ἀναγράφοντες ἐν σανίσιν ἐκτιθέντων πρὸς τοὺς ἐπωνύμους σκοπεῖν τῷ βουλομένῳ, καὶ παραδιδόντων ταῖς ἀρχαῖς ἐν τῷδε τῷ μηνί. τοὺς δὲ παραδιδομένους νόμους δοκιμασάτω πρότερον ἡ βουλὴ καὶ οἱ νομοθέται οἱ πεντακόσιοι, οὓς οἱ δημόται εἵλοντο, ἐπειδὴ ὀμωμόκασιν. ἐξεῖναι δὲ καὶ ἰδιώτῃ τῷ βουλομένῳ εἰσίοντι εἰς τὴν βουλὴν συμβουλεύειν, ὅ τι ἂν ἀγαθὸν ἔχῃ περὶ τῶν νόμων. ἐπειδὰν δὲ τεθῶσιν οἱ νόμοι ἐπιμελείσθω ἡ βουλὴ ἡ ἐξ Ἀρείου πάγου τῶν νόμων, ὅπως ἂν αἱ ἀρχαὶ τοῖς κειμένοις νόμοις χρῶνται. τοὺς δὲ κυρουμένους τῶν νόμων ἀναγράφειν εἰς τὸν τοῖχον, ἵνα περ πρότερον ἀνεγράφησαν, σκοπεῖν τῷ βουλομένῳ.* It may be doubted whether the form of the psephism, as inserted in the speech of Andokides, is authentic; but no valid doubts can be alleged against its matter.

to save the amnesty, is in itself something quite inconceivable. It could only consist in rejecting all the laws which the amnestied persons had transgressed, and replacing them by others. Were these others to have no penalties for the offences which such persons had committed, and for which the ancient laws prescribed penalties? I imagine the offences had penalties attached in the revised code as in the ancient; the amnesty was a special measure in favour of individuals, and left the general legislation absolutely untouched.

About the two kinds of Nomothetæ who are distinguished in the psephism of Tisamenus, which I subjoined in the note, Mr. Grote pronounces for the view that those elected by the Senate are only a more select committee from among the five hundred elected by the Demotæ. They had the special duty of making or collecting proposals, which were then to be made public in the way laid down in the Psephisma, and finally to be submitted to the examination of the Senate, and the whole body of the five hundred Nomothetæ. This is clearly the most probable view; but it has already been put forward by C. F. Hermann[h].

§ 10. Reasons for Aristophon's Law about Citizenship.

The time of the restored democracy under Eukleides is also marked by the law of Aristophon, which enacted that citizenship should henceforward be confined to children whose father and mother were both citizens, and that those who had not citizen parents on both sides should be reckoned aliens. Previously, the custom had been less strict, and citizenship had not been denied to the latter class. Mr. Grote[i] believes that he sees the reason of this in the position of Athens during the time of her maritime empire, when Athenian citizens were dispersed among the confederate states all over the islands and coasts of the Ægean sea. This must have tended materially to encourage intermarriages between them and the women of other Grecian insular states; and

[h] In the Jahrb. f. wissensch. Kritik. 1842, i. p. 128.

[i] vi. 18, c. 66.

by recognising such marriages as valid, and the sons born of them as Athenian citizens, the bonds between Athens and her confederates were strengthened, and a certain Pan-Hellenic sympathy was nourished. But when, after the loss of the maritime empire, her position was altered, then this consideration too ceased to exist; and Pan-Hellenic sympathy gave place to the individualistic tendency which characterised all Greeks, and to the exclusion of aliens from the franchise. No doubt there is some truth in this view; still, the matter has another side, which Mr. Grote overlooks. The earlier procedure had a reason, not merely in Pan-Hellenic, but also in democratic tendencies. Democracy was everywhere inclined to increase the numbers on which its power rested. So there were, as we know from Aristotle[k], democracies in which all sons of citizen mothers ranked as citizens, even if the fathers were aliens. He tells[l] us, too, that in order to secure the democracy, the popular leaders are in the habit of strengthening the Demos, by receiving as large numbers as possible, and making them into citizens; not merely those born in lawful wedlock, but also illegitimate children, and those who are of citizen birth on one side only, whether by father or by mother. The great facility with which Athenian citizenship was given to all comers from foreign parts in the time of the classical orators, is the subject of loud complaints in Isokrates and Demosthenes. But as regards the law of Aristophon, Perikles had carried just the same law, which was now merely re-enacted by him, forty years before, at the height of the maritime empire. Therefore, Mr. Grote's[m] expression needs to be corrected when he speaks of a *law* which prevailed before Eukleides, according to which children of an unequal[n] marriage were nevertheless citizens. Such a law, which would have annulled that of Perikles, there was not. It was only that a more lax practice had crept in, as it crept in again soon after Aristophon. Herr Wes-

[k] Pol., iii. 5. 7. [l] Pol., vi. 4. 16. [m] vi. 18.

[n] [This would mean, where either husband only or wife only were citizens. Grote does not include the latter case.]

termann[o] has made it very probable that even the Periklean law was no more than a renewal of an old Solonian law, which had merely fallen out of use by degrees, but had never been formally repealed. The reason of its renewal by Aristophon certainly lay not so much in the change of external relations by the loss of the maritime empire, as in the endeavour to oppose some wholesome limits to the democratic elements, which were but too powerful in the state. The same endeavour is perceptible in the far more thorough proposal of Phormisius, being, however, no longer practicable, according to which only those who had landed property were in future to rank as full citizens. The law of Aristophon, indeed, was more lenient than that of Perikles had been; it deprived no one of citizenship who possessed it, and only ordained a stricter rule for the future; whereas the other had struck off not much less than five thousand citizens.

§ 11. Proposal of Phormisius to restrict the Franchise not oligarchic.

I cannot refrain from saying a few more words on the proposal of Phormisius, because Mr. Grote has judged of it not only with great disfavour, but, as I think, with great injustice. It is entirely wrong to regard Phormisius as an adherent of the oligarchical party. We read, that he was among those who returned to the city with Thrasybulus after the fall of the thirty; he had therefore fled before the oligarchs, had probably fought on the side of their antagonists, and helped to win liberty back again. But he was no friend to the all-levelling democracy, which reigned at Athens after the time of Perikles. Granting that we are not to doubt the statement of Dionysius[p], that his proposal had the approval of the Lacedæmonians, still we may assert with confidence that he did not make it in order to please them, but from a genuine conviction, and

[o] Beiträge zur Geschichte des athenischen Bürgerrechts, in the reports of the Transactions of the K. Sächs. Gesellschaft d. Wissensch. philol. histor. Cl. vol. i. p. 200 ff.

[p] Lysias, c. 32.

with patriotic motives. Mr. Grote[q] says disapprovingly; "Phormisius had of course at his command the usual arguments, by which it is attempted to prove that poor men have no business with political judgment or action." And he then repeats the accusations which Lysias (in the fragment preserved in Dionysius) brings forward against Phormisius; designating his proposal as malicious and absurd, as having for its purpose to introduce oligarchy, and to rob Athens of a great part of the power she derived from her constitution, of her patriotism, and her harmony. "Never, certainly[r]," he continues, "was the fallacy which connects political depravity or incapacity with a poor station, and political virtue or judgment with wealth, more conspicuously unmasked, than in reference to the recent experience of Athens. The remark of Thrasybulus[s] was most true, that a greater number of atrocities, both against person and against property, had been committed in a few months by the Thirty" and their adherents, "than the poor majority of the Demos had sanctioned during two generations of democracy." This is very true; but how far it can go towards justifying the reproaches made against Phormisius I do not see.

Oligarchy differs *toto cælo* from what Phormisius intended. His proposal, if carried, would, according to Dionysius, have deprived very nearly five thousand citizens of their full citizenship, therefore about the same number as had some decades of years before been struck off according to the law of Perikles. The question might be raised, whether the want of a citizen mother was really a more proper ground of expulsion, than the want of that kind of property which all ancient political philosophers regarded as the only security for a trustworthy body of citizens. Mr. Grote[t] only mentions the Periklean law in passing, and would certainly not suffer any one, by reason of that law, to reproach the statesman whom he justly extols, with oligarchical or even anti-democratic sentiments. Besides, a constitution which invites some three-quarters of the whole

[q] Vol. vi. p. 5, c. 66. [r] Id. ib. [s] Xen. Hell., ii. 4. 40.
[t] iv. 290, c. 49.

body to a share in the government, and only excludes one quarter, is still democratic enough; it is still at least a large majority, ruling over a vastly smaller minority. It is all the more democratic, that it only makes landed property, as such, the condition of citizenship, without demanding any definite amount of it, thus not excluding even the smallest landowner. It does not even make any difference in privilege, according to different amounts of property, as Solon did, but gives equal rights to the largest and smallest landowners.

There is no reason for supposing that Phormisius meant anything but this, e.g. that he had in view a timocratic arrangement by classes. Among the minority whom his proposal would have excluded from full citizenship, there were no doubt many brave and honourable people; no one would deny that. And of course they were not all poor; there might be individuals among them who possessed more than most of the small landowners, whom yet Phormisius did not try to exclude; but the greater part of them necessarily consisted of that "banausic" and maritime population, which ancient politicians unanimously, and without exception, designate as least fitted for the decision and direction of matters of state. Is it likely that so universal an opinion rested only on imagination, and not on experience? Mr. Grote quotes, on the other hand, in praise of this class, a passage from Xenophon[u], which says that there was less insubordination among the common people who served on board the fleet, than among the richer classes who served as cavalry or hoplites. The remark is no doubt correct, and there were good reasons for the fact, which are partly at least indicated in Xenophon himself; that is, that the officers of the hoplites and cavalry, appointed by democratic election, were very often destitute of the qualities requisite for command, whereas the ships' crews were, as a rule, under well-trained captains, and the necessity of precise order was far more obvious in the service at sea than on land. But what has this obedience and discipline to do with capacity for political rule? Of course, it is an

[u] Memorab., iii. 5. 19.

old and true saying, that in order to govern, men must learn to obey; but I do not think that the converse will hold good, and that whoever can obey is therefore fit to govern.

§ 12. Criticism of Grote's estimate of the Athenian Democracy.

Again, as regards the comparison of the Athenian Demos and its acts with the conduct of the oligarchs, there cannot of course be a moment's doubt which side committed most, and most heinous, crimes; but it must be repeated that such a constitution as Phormisius proposed is really anything but oligarchical; that it is, in fact, quite sufficiently democratic. Only a madman could wish to defend the actions of which the oligarchy was guilty in this period of re-action against the democracy; but we are not to forget in this question that the dangerous character of this oligarchy had its root in nothing else than the extreme exasperation with which the wealthy and cultivated minority saw itself subjected to the domination of the masses, which necessarily consisted in great part of rough and uncultivated persons, and which were guided by demagogues destitute of merit and worth. That such a sovereignty of the masses must have been oppressive in the highest degree to all who did not belong to them, is clear; and the remarks made on this point in the tract on the Athenian commonwealth among Xenophon's writings, may be set down as one-sided, but hardly as unfounded. The hostility to the democracy can be thus explained, although the actions to which it led were morally most reprehensible, and even politically were mistakes. That, on the other hand, the populace of Athens compared with the oligarchs is seen to be infinitely better, any one will gladly admit. Every one will say, with the most assured conviction, that if ever any people was capable of self-government, the Athenians were that people. This is Pausanias'[x] opinion, when he says that democracy never made any people great except the Athenians, and it had

[x] iv. 35. 3.

made them great because they were superior to all other Greeks in native good sense, and transgressed least against the laws which they had. Mr. Grote's work, in many of its chapters, forms such a corroborative commentary on these words, as must satisfy the warmest friends and admirers of Athens. He has had the skill to refute successfully not a few charges which have been brought against the Athenian Demos, to reduce others at least to smaller proportions, and to explain and extenuate what could not be praised. Such reproaches, he remarks[y], rest to a great extent on the authority of passages of Aristophanes, which cannot possibly pass as credible evidence, where the object is to obtain historical truth. And it is true that Aristophanes is a caricaturist, who idealises his figures in his own fashion; that is, by distorting them beyond reality in the direction of what is ugly and ridiculous; still, a good caricaturist will have skill to make the original recognisable, in spite of the distortions; and Aristophanes was no exception.

Mr. Grote, too, idealises a little, and of course with an opposite tendency. Even to a Kleon, whom no one ever praised before, he succeeds in giving a tolerable, even a laudable appearance, with greater skill than Isokrates to his "illaudatus Busiris." His representation of the proceedings at the trial of the generals who were condemned to death for alleged neglect of duty after the battle of Arginusæ, must be called a real masterpiece, which cannot easily be matched. The defence of the Athenians against the charge of mean ingratitude in the condemnation of Miltiades, and of crying injustice in the sentence of death upon Socrates, leave nothing to be desired; and everything good and commendable that the Athenians did at home or abroad, in peace or war, finds with him complete appreciation and due honour. Yet, though we gladly agree in all the good that he says of the Athenians, though we readily listen to his palliation of their faults and failings, still all this cannot modify our judgment of their democracy. Even the noble people of Athens did not bear it long without experiencing in itself its mischievous effects; even in their

[y] vi. 38, note, c. 67.

case it proved a dangerous gift, which ends by enfeebling and undermining the virtues by which alone it can be supported. The part of the history which has yet to come will compel Mr. Grote to this admission, however warm a friend of the democracy he may be. Whether, indeed, the democracy was not inevitable is another question. It must be conceded that, without it, Athens would not have been so great and so brilliant as we see her in the fifth century. But whether precisely this kind of greatness and brilliancy was the most desirable; whether the noblest productions of Athenian genius, which will never cease to educate and delight mankind, could not have come into being under a somewhat less absolute democracy, may be left to every one to consider for himself. But this much is certain; that among the ancients themselves, those whom we honour as the best and wisest, the creators of the most imperishable works of genius, do not appear as friendly to the democracy in question. But it is not to my present purpose to enter upon discussions of this kind; my purpose was only to correct, as well as I could, the points in which Mr. Grote's account of the history of the Athenian constitution, and the successive stages of its development, appeared to me incorrect. I desired to contribute my share to prevent false views, recommended by his authority, from obtaining more general acceptance, and driving out the true. I recognise, as readily as any one, the great value of his work as a whole, in spite of the criticisms which I have made on some details; and I am glad to end my treatise as I began it, with this recognition, and with an expression of gratitude for the pleasure and profit which the study of his work has afforded, and will continue to afford me.

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